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# Low Income Housing Tax Credit

## Qualified Allocation Plan

2014



## **CHAPTER 16 LOW-INCOME HOUSING TAX CREDIT RULE**

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## **99-346 MAINE STATE HOUSING AUTHORITY**

### **Chapter 16: LOW-INCOME HOUSING TAX CREDIT RULE**

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**Summary:** The Tax Reform Act of 1986 created the federal low-income housing tax credit to encourage private capital investment in the development of qualified affordable residential rental housing. Section 42 of the Internal Revenue Code of 1986, as amended, and associated regulations and guidance govern the federal low-income housing tax credit. Section 42 of the Code requires housing credit agencies to adopt a qualified allocation plan for allocating and administering the federal low-income housing tax credit, including the annual ceiling of federal low-income housing tax credits allocated to housing credit agencies. Maine State Housing Authority is the designated housing credit agency for the State of Maine. This rule is the qualified allocation plan for the State of Maine. It establishes the policies, selection criteria and procedures for allocating and administering the federal low-income housing tax credit in the State of Maine.

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### **SECTION 1: DEFINITIONS**

- A. “Act” means the Maine Housing Authorities Act, 30-A M.R.S.A. §4701 *et seq.*, as amended.
- B. “Adaptive Reuse” means the conversion of existing non-housing buildings or structures to multi-family residential rental housing.
- C. “Affordable Housing TIF” means an affordable housing development district and program approved by MaineHousing pursuant to MaineHousing’s Affordable Housing Tax Increment Financing Program, 30-A M.R.S.A., Chapter 206, Subchapter 3 and the Act.
- D. “Applicable Fraction” means the fraction defined in Section 42(c)(1)(B) of the Code.
- E. “Applicable Percentage” means the percentage defined in Section 42(b) of the Code.
- F. “Applicant” means an individual or entity applying for Credit governed by this rule or its successors and assigns, including without limitation the Owner of the Project if the Owner is not formed or established at the time of Application.
- G. “Application” means an application to MaineHousing for an allocation of Credit governed by this rule.
- H. “Benchmark Total Development Cost” means the benchmark Total Development Cost by housing type set forth in Section 6.B.1., as established by MaineHousing

based on the historical average Total Development Cost of completed housing by type.

- I. “Binding Agreement” means a binding agreement executed by MaineHousing and the Applicant pursuant to which the Applicant elects the Applicable Percentage for a Project pursuant to Section 42(b) of the Code.
- J. “Capitalized Lease Value” means the net present value of all lease payments under a lease calculated over the term of the lease using the 10-year Treasury note rate as of 30 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points.
- K. “Code” means the Internal Revenue Code of 1986, as amended, including applicable rules and regulations proposed or promulgated thereunder.
- L. “Community Revitalization Plan” means (1) a community that has been designated by HUD or RD as an Empowerment Zone, a Renewal Community or Enterprise Community, or a Neighborhood Revitalization Strategy Area, or (2) a written plan that is formally adopted by the governing body of a municipality following a concerted planning process and public input, specifically targets a neighborhood or area in the community (not a single building or site or the entire municipality) for redevelopment or revitalization, and includes (a) an assessment of the existing physical structures and infrastructure of the area, (b) detailed policy goals with respect to economic redevelopment, the rehabilitation or development of housing (including multi-family rental housing) and the improvement or expansion of infrastructure, and (c) proposes activities and a timetable for implementing the policy goals. Comprehensive plans, zoning and land use plans and other plans about the growth or use of areas within a municipality, plans for a single development and plans formulated by or behalf of the Applicant are not Community Revitalization Plans.
- M. “Compliance Period” means the period described in Section 42(i)(1) of the Code.
- N. “Consolidated Plan” means the current version of the *Maine Consolidated Plan* prepared by MaineHousing and Maine Department of Economic and Community Development.
- O. “Credit” means the low-income housing tax credit established pursuant to Section 42 of the Code and allocated pursuant to this rule.
- P. “Credit Period” means the period described in Section 42(f)(1) of the Code.

- Q. “Demand Response Transportation” means on-call transportation services that operate at least 3 days per week and provide service throughout the day.
- R. “Developer Fee” means the compensation to the individual(s) or entity(ies) responsible for the work, costs and risks associated with the development of a Project, including amounts paid to consultants to perform tasks on behalf of such individuals or entities, but does not include compensation for professional services such as environmental assessments, rental market studies, soil tests and water tests.
- S. “Difficult-to-Develop Area” or “DDA” means an area of the State that is designated by HUD as a difficult development area pursuant to Section 42(d)(5)(B)(iii)(I) of the Code or an area of the State that is designated by MaineHousing as a difficult-to-develop area in Section 7.A.3 pursuant to Section 42(d)(5)(B)(v) of the Code.
- T. “Elderly Housing” means a Project that is designated as elderly housing and receives funding and project-based rental assistance under a RD or HUD multi-family elderly housing program (such as RD’s Section 515 Rural Rental Housing Program and HUD’s Section 202 Supportive Housing for the Elderly Program) or meets the definition of “housing for older persons” under the federal Fair Housing Act, 42 U.S.C. § 3607(b)(2) and the Maine Human Rights Act, 5 M.R.S.A. §4581 et seq.
- U. “Eligible Basis” means eligible basis as defined in Section 42(d) of the Code.
- V. “Eligible Rehabilitation Costs” means the expenses incurred or to be incurred which qualify as rehabilitation expenditures under Section 42(e) of the Code.
- W. “Extended Low-income Housing Commitment” means an agreement that satisfies the requirements of Section 42(h)(6)(B) of the Code and Section 8.D.
- X. “Extended Use Period” means the period described in Section 5.B. pursuant to Section 42(h)(6)(D) of the Code.
- Y. “Fixed-route Public Transportation” means year-round, regularly scheduled public transportation that operates at least 5 days per week and provides regular service during commuter hours (commuter hours being 6:30 AM to 9:30 AM and 3:00 PM to 6:00 PM daily).
- Z. “Formerly Developed Site” means (i) a site currently used for other than residential or agricultural purposes, (ii) a site formerly used for other than residential housing with 4 or fewer dwelling units or agricultural purposes on which one or more substantial buildings or structures currently exist or have been demolished or removed for purposes of redeveloping the site, or (iii) a site otherwise designated by a municipality for redevelopment to renew a blighted area. An undeveloped portion

of an existing site, regardless of the use of the existing site, is not a Formerly Developed Site.

- AA. “Hard Rehabilitation Costs” means the sum of site costs, the costs of replacing or improving structures and components, remediation and disposal of environmental hazards, contractor profit and overhead and general conditions incurred in connection with the rehabilitation of the existing housing. Hard Rehabilitation Costs do not include construction contingency, relocation costs or soft costs.
- BB. “Housing Development Costs” means the total of all direct and indirect costs incurred in financing, creating, purchasing or rehabilitating Qualified Low-income Housing Projects except the costs attributable to the acquisition of the land and any existing buildings as determined by MaineHousing.
- CC. “HUD” means the United States Department of Housing and Urban Development.
- DD. “Intermediary Costs” means all Housing Development Costs except the actual construction or Eligible Rehabilitation Costs attributable to the development of the units.
- EE. “IRS” means the United States Department of Treasury, Bureau of Internal Revenue Service.
- FF. “MaineHousing” means Maine State Housing Authority.
- GG. “Maximum Total Development Cost” means the maximum amount of Total Development Cost by housing type in Section 5.C. that a Project can have and be eligible for Credit under this rule.
- HH. “Maximum Credit Amount” means the maximum amount of Credit a Project is eligible to receive pursuant to Section 3.D.
- II. “Notice to Proceed” means the notice to the Applicant that a Project has been selected for further evaluation to determine the Project’s eligibility for Credit and the amount of Credit to be allocated for the Project.
- JJ. “Owner” means the owner of a Qualified Low-income Building which has received an allocation of Credit from MaineHousing pursuant to this Qualified Allocation Plan or a prior Qualified Allocation Plan for this State.
- KK. “Placed in Service” means the date on which a Qualified Low-income Building is suitable and available for occupancy as determined in accordance with Section 42 of the Code.

- LL. “Principal” means the entity with an ownership interest in the Owner that controls the development and day-to-day operation of the Project, which includes the general partner(s) invested with the management authority if the Owner is a limited partnership and the manager(s) or member(s) invested with the management authority if the Owner is a limited liability company.
- MM. “Project” means the multi-family housing project described in the Application.
- NN. “Qualified Allocation Plan” or “Plan” means the plan for allocation and administration of the Credit, including the annual State Ceiling, adopted by the housing credit agency pursuant Section 42(m)(1)(B) of the Code.
- OO. “Qualified Basis” means qualified basis as defined in Section 42(c)(1) of the Code.
- PP. “Qualified Census Tract” means an area of the State designated by HUD as a qualified census tract pursuant to Section 42(d)(5)(B)(ii) of the Code.
- QQ. “Qualified Low-income Building” or “Building” means a building as defined in Section 42(c)(2) of the Code.
- RR. “Qualified Low-income Housing Project” means a project as defined in Section 42(g) of the Code.
- SS. “Qualified Non-profit Organization” means an organization defined in Section 42(h)(5)(C) of the Code.
- TT. “Related Development” means any development of which the Project is a part or is related and the Project cannot be completed without the completion of the development.
- UU. “RD” or “Rural Development” means the United States of America acting through the United States Department of Agriculture, Rural Housing Services.
- VV. “Safe Walking Distance” means year-round pedestrian route appropriate to the area, including sidewalks adjacent to the Project, paved wide shoulders suitable for walking, crosswalks and traffic signals at busy roads or intersections, and the route must be walkable year-round, which includes being plowed during the winter.
- WW. “Section” or “subsection” mean or refer to sections and subsections of this rule.

- XX. “Section 8” means Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as amended.
- YY. “Service Center Community” means a municipality or group of municipalities identified by the Municipal Planning Assistance Program of the Department of Agriculture, Conservation and Forestry as a Regional Service Center.
- ZZ. “State” means the State of Maine.
- AAA. “State Ceiling” means the State’s housing credit ceiling established pursuant to Section 42(h)(3)(C) of the Code.
- BBB. “State’s Growth Management Law” means the provisions set forth in 30-A M.R.S.A. § 4349-A, as amended.
- CCC. “Total Construction Cost” means the sum of site costs, costs of constructing or rehabilitating structures, systems, facilities, units and components, general requirements, bond premiums, and contractor overhead and profit as determined by MaineHousing.
- DDD. “Total Development Cost” means the sum of all costs of developing and constructing or rehabilitating a Project, including without limitation, acquisition costs, the Capitalized Lease Value of all leases of land or land and building(s), demolition costs, Total Construction Costs, construction contingency, soft costs (such as permits, design and engineering fees, environmental site assessment fees and legal fees), costs associated with obtaining and carrying a financing package, Developer Fee and project reserves, as determined by MaineHousing.
- EEE. “Total Development Cost Per Unit” means the quotient of the Total Development Cost divided by the total number of all units in the Project.
- FFF. “Urban Infill Site” means land that was left vacant or underutilized in the development of an urban area, such as a vacant lot between existing buildings or a parking lot in an urban area.
- GGG. “Very Low Income” means individuals or families whose income is at or below 50% of the area median income as determined in accordance with Section 42(g) of the Code.

## **SECTION 2: HOUSING NEEDS AND PRIORITIES**

- A. **Consolidated Plan.** MaineHousing annually completes a statewide needs assessment as part of the Consolidated Plan. Based on that annual needs assessment,

MaineHousing determines priorities in its housing delivery programs. MaineHousing will allocate Credit resources in a manner consistent with the needs assessment and priorities approved through the Consolidated Plan. The following needs are identified:

1. Creation and maintenance of an adequate supply of decent, safe and sanitary rental housing affordable for persons with Very Low Income.
2. Rehabilitation of existing housing stock, which does not result in displacement or a substantial increase in housing costs.
3. Increased availability of housing with services for persons with special needs including, without limitation, housing for persons who are homeless, housing for persons with mental and physical disabilities and housing for persons who are elderly.

B. **Housing Priorities.** In consideration of the housing needs identified above, MaineHousing has established the following housing priorities for allocation of the Credit:

1. The most efficient use of the Credit and other MaineHousing resources, including Projects that have the lowest Total Development Cost;
2. Projects that provide housing for persons with Very Low Income;
3. Projects that incorporate smart growth principles;
4. Projects that contribute to economically diverse communities;
5. Projects that significantly rehabilitate and preserve existing affordable rental housing;
6. Projects that have federal subsidies but need the Credit to make the Project feasible, including Projects with RD and HUD funding;
7. Projects that meet the housing and service needs of distinct populations of a community, including persons who are homeless or have other special needs; and
8. Projects that receive new or preserve existing project-based rental assistance to provide housing for persons with Very Low Income.

### **SECTION 3: STATE CEILING, SET-ASIDES AND MAXIMUM CREDIT AMOUNT**

A. **Amount of State Ceiling.** The State Ceiling for the State for each calendar year will be the sum of:

1. The per-capita dollar amount established pursuant to Section 42(h)(3) of the Code multiplied by the State population, using the most recent estimate of the State's population released by the United States Bureau of Census before the beginning of such calendar year or determined by any other method as may be authorized or required by the Code;
2. The unused State Ceiling for the State, if any, for the preceding calendar year;
3. The amount of the State Ceiling returned in the calendar year; and
4. The amount, if any, allocated to MaineHousing by the United States Secretary of the Treasury from the re-pooling of other states' unused housing credit allocations.

All of the current per-capita State Ceiling remaining at the end of a calendar year, after all current year allocations and carryover allocations have been made and less any State Ceiling that is or will be returned to the national pool of federal low-income housing tax credits, will automatically be carried over and added to the State Ceiling for the following year to be allocated as part of the State Ceiling for that year.

B. **Non-Profit Set-aside.** Ten percent (10%) of the annual State Ceiling will be set aside for Projects in which a Qualified Non-profit Organization will own an interest and materially participate in the development and operation of the Project throughout the Compliance Period in accordance with Section 42 (h)(5)(B) of the Code. If the amount of Credit under this set-aside is not sufficient to complete the Project proposed in the highest-scoring eligible Application, additional Credit will be allocated for the Project regardless of the score of the Application relative to the scores of the other Applications.

C. **Preservation Set-aside.** Up to \$500,000 of the annual State Ceiling will be set aside for the preservation and rehabilitation of existing multi-family rental housing that (i) is subject to a restrictive covenant requiring any of the housing units to be affordable to persons with income at or below 80% of area median income as determined by HUD, and (ii) satisfies the minimum rehabilitation requirements set forth in Section 5.D.3. If the amount of Credit under this set-aside is sufficient to complete the Project proposed in the highest-scoring eligible Application, but is not sufficient to complete the Project proposed in the second highest-scoring eligible Application, additional Credit may be allocated for the Project in the second highest-scoring

Application, based on the quality of the Application and the most efficient use of Credit as determined by MaineHousing, in its sole discretion, and regardless of the score of the Application relative to the scores of the other Applications.

- D. **Maximum Credit Amount.** The maximum amount of Credit that will be allocated for each Project is the lesser of (i) \$20,000 per Credit-eligible unit for a Project and (ii) 30% of the 2014 State Ceiling.

#### **SECTION 4: ALLOCATION PROCESS**

- A. **Pre-Application Site Review.** A prospective Project must undergo a site review and evaluation by MaineHousing pursuant to this subsection before an Application is submitted. An Application for a Project that has not undergone a site review and evaluation by MaineHousing will be rejected. The purpose of the evaluation is to determine the prospective Project's suitability for housing, which determination shall be made solely by MaineHousing. MaineHousing will consider (1) the physical site of the prospective Project, (2) the difficulty of developing the site, (3) the building(s) to be constructed and/or the building(s) to be rehabilitated as part of the Project, (4) any demolition, remediation or site work to be performed in connection with the Project and (5) the projected capital and operating costs of developing and operating the Project. The Applicant must submit all information about a prospective Project required by MaineHousing, in form and substance acceptable to MaineHousing, and a fee in the amount of \$500 to MaineHousing at least 45 days prior to the deadline for Applications for the applicable Credit round. The fee will be applied to the Application fee. MaineHousing will notify the Applicant in writing within 30 days of receiving a complete request for site review if MaineHousing determines a prospective Project is unsuitable. If a prospective Project is deemed unsuitable based on the evaluation, the Project is not eligible to apply for Credit.

An Applicant may appeal MaineHousing's determination that a prospective Project is unsuitable to MaineHousing's Director within 20 days of the date of the notice from MaineHousing. The appeal must be in writing and identify the Applicant and the Project. The Applicant may submit additional information not previously provided to MaineHousing with the appeal if the Applicant believes the information is relevant to the suitability of the Project. MaineHousing's Director will promptly respond with a written decision on the appeal. An Applicant must use and complete this appeal process before pursuing other remedies. A decision by MaineHousing's Director pursuant to this appeal process constitutes final agency action with respect to the site review process described in this subparagraph.

- B. **Application.** The deadline for submitting all Applications for the 2014 State Ceiling, including Applications for the Set-asides under the 2014 State Ceiling in Section 3, is 5:00 PM on Thursday, September 26, 2013.

The Application shall be in the form prescribed by MaineHousing. The Applicant must complete the Application and submit it electronically to MaineHousing by the deadline set forth above. The application fee required under this subsection and a full-size copy of the schematic to-scale plans required under Section 5.L. shall be postmarked no later than the deadline set forth above. The Application must be complete. If an Applicant fails to complete any of the prescribed forms or schedules in the Application or submit any of the information or documentation required in the Application with respect to the threshold requirements in Section 5, the Application will be rejected.

The Application must include a non-refundable application fee as follows:

|                              |         |
|------------------------------|---------|
| Projects of up to 11 units   | \$ 250  |
| Projects of 11 to 23 units   | \$ 500  |
| Projects of 24 or more units | \$1,000 |

The non-refundable application fee must be paid for any Application re-submitted or carried over from one tax credit year to the next tax credit year.

MaineHousing reserves the right to require additional information it deems necessary in order to process an Application.

MaineHousing may reject any and all Applications and may refuse to award any or all of the Credit in its sole discretion. An Applicant may withdraw an Application at any time by written notice to MaineHousing, but the application fee will not be refunded.

- C. **Ineligible Applicants.** An Application will not be accepted, processed, or approved by MaineHousing if the Applicant or any Principal or any affiliate thereof, or any entity controlled by the Applicant or Principal or affiliate thereof, (i) has in the last 6 months been declared in default or been 60 days or more delinquent on any loan with MaineHousing unless an approved payment or workout plan is in place and in good standing; or (ii) has ever been the owner of any MaineHousing-financed project in which MaineHousing has foreclosed a mortgage interest or received a deed-in-lieu of foreclosure of a mortgage interest unless waived by MaineHousing for public policy reasons, which waiver must be in writing, signed by the Director of MaineHousing and state the justification for the waiver; or (iii) is presently debarred, suspended, proposed for debarment, or excluded from participation in any federal or state programs.
- D. **Notice to Local Jurisdiction.** Upon receipt of an Application, MaineHousing will provide notice of the proposed Project to the chief executive officer of the municipality and the public housing authority with jurisdiction over the proposed

location of the Project. Such notice will provide for a 15-day period in which to comment on the proposed Project. Any comments received will become part of the Application and will be considered by MaineHousing in the selection process.

- E. **Selection Process.** Applications that are received and accepted by MaineHousing and meet the threshold requirements set forth in Section 5 will be reviewed and scored according to the scoring criteria set forth in Section 6. The Applications will be ranked from highest scoring to the lowest scoring Application. The tie breaker mechanism in Section 6.E. will be used to prioritize Applications with the same score. Once Applications are ranked, MaineHousing will determine which Applications will be selected to receive an award of Credit.
- F. **Notice to Proceed.** MaineHousing will issue a Notice to Proceed to Applications selected to receive an award of Credit. The Notice to Proceed must be accepted by the Applicant by executing and returning the original Notice to Proceed to MaineHousing within a specified time. The Notice to Proceed will provide that MaineHousing will evaluate the Project pursuant to Section 7 to determine the amount of Credit, if any, to be allocated to the Project. The Notice to Proceed will include deadlines for submitting the information required by MaineHousing to perform the evaluation, submitting construction plans and specifications, closing the construction and permanent financing for the Project and completing the Project.
- G. **Waiting List.** All Applications that were accepted and scored, but not selected, will be placed on a waiting list prioritized by score, from the highest to the lowest scoring Application. Any unused Credit will be made available to Applications on the waiting list in the order of priority. An Application for a Project on the waiting list will be deemed withdrawn if MaineHousing issues a Notice to Proceed for the Project under another MaineHousing program.
- H. **Credit Allocation.** Once the Applicant accepts the Notice to Proceed by executing and returning the Notice to Proceed to MaineHousing, MaineHousing will determine the amount of Credit to be allocated for the Project based on the evaluation procedure set forth in Section 7. The amount of Credit will not exceed the Maximum Credit Amount and will be subject to other limitations set forth in Section 7. Credit will be allocated in accordance with Section 8 of this rule.
- I. **Termination of Application or Notice to Proceed.** MaineHousing will deem an Application withdrawn and any Notice to Proceed, if issued, cancelled if one or more of the following events occur after the Application is submitted.
  - 1. The Application or the Notice to Proceed is assigned or there is a change of Applicant without MaineHousing's prior written consent.

2. There is a change in the location of the Project from the location identified in the Application.
3. There is any change in the commitments made in the Application which results in a net reduction in the score that the Application received pursuant to the scoring criteria set forth in Section 6, except as provided in Section 6.B.1. and Section 6.B.2.
4. There is a change in the design of the Project or the financing for the Project from the design or the financing described in the Application which MaineHousing determines, in its sole discretion, would result in a substantial increase in the amount of Credit or other MaineHousing funding for the Project that MaineHousing determined the Applicant was eligible to receive.
5. The Total Development Cost of the Project exceeds the Maximum Total Development Cost.
6. There is any other material or substantive amendment or change to the Application without MaineHousing's prior written consent.

## **SECTION 5: THRESHOLD REQUIREMENTS**

The threshold requirements set forth in this Section 5 must be satisfied to be eligible for Credit. The Applicant must demonstrate satisfaction of the following threshold requirements by completing all required information and submitting all required documentation with respect to the threshold requirements in the Application.

- A. **Eligible Projects.** The Project described in the Application must be a Qualified Low-income Housing Project.
- B. **Affordability.** An Applicant must agree to maintain the Project as residential rental housing, keep at least 40% of the total Credit-eligible units in a Project occupied by persons with Very Low Income and keep the Credit-eligible units in the Project rent-restricted in accordance with Section 42 of the Code for a minimum period of 45 years.
- C. **Maximum Total Development Cost.** An Application will not be accepted, processed or approved by MaineHousing if, at any time prior to the later of the construction loan closing for the Project or an allocation of Credit for the Project, the Total Development Cost of the Project exceeds the maximum Total Development Cost for a project of its type as follows.

| Type of Project                                    | Maximum Total Development Cost |
|--|--------------------------------|
| New Construction (Elderly)                         | \$215,000 per unit             |
| New Construction (Family)                          | \$240,000 per unit             |
| Acquisition and Rehabilitation of Existing Housing | \$150,000 per unit             |
| Adaptive Reuse                                     | \$265,000 per unit             |

A Project that involves the acquisition and complete demolition of all existing structures on the site will be treated as a new construction project. If a Project involves more than one of these project types, the Maximum Total Development Cost of the Project is the sum of the percentage of Total Development Cost allocable to each type, based on the number of units in each type, as applied to the Maximum Total Development Cost for the respective type. For example, the Maximum Total Development Cost of an Elderly Housing Project that involves the conversion of an existing historic school into 10 units plus the construction of a new addition containing 10 units is \$240,000 per unit, which is 50% of the \$265,000 Maximum Total Development Cost for Adaptive Reuse plus 50% of the \$215,000 Maximum Total Development Cost for the new construction of Elderly Housing.

D. **Acquisition and Rehabilitation of Existing Housing.** Projects that involve the acquisition and rehabilitation of existing multi-family housing are subject to the following limitations and requirements.

1. **Limitations.** Projects that involve the acquisition of existing affordable housing, except Projects that also involve the addition of at least 20 new units, are only eligible for the Credit made available under the Preservation Set-aside in Section 3.C.
2. **Capital Needs Assessment.** The Application must include a capital needs assessment of the existing housing that will be rehabilitated as part of the Project. The capital needs assessment must be performed by a qualified independent third party acceptable to MaineHousing, such as a licensed architect or engineer, and must be completed within one (1) year before the deadline for submitting Applications.

The assessment must include a site visit, a physical inspection of the interior and exterior of at least 10% of the units and all other structures and facilities that will be part of the Project, and an interview with the on-site property manager and maintenance personnel concerning past repairs and improvements, pending repairs and improvements and existing or chronic physical deficiencies. The assessment must also consider the presence of environmental and other hazards, including without limitation, asbestos, lead

paint, mold, water damage and insect infestations. The assessment must, at a minimum, examine and analyze the following components:

- a. Site, including without limitation topography, drainage, pavement, curbing, walkways, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and all utility lines;
- b. Structural systems and components, both substructure and superstructure, including without limitation exterior walls, balconies and stairways, exterior doors and windows, and roofing;
- c. Interiors, including without limitation unit and common area finishes and substraight (e.g. flooring, underlays, carpeting, plaster or drywall, wall coverings and paint condition), and unit and common area kitchen finishes, cabinets, countertops and appliances, and unit and common area bathroom finishes, fixtures and accessories, laundry facilities, and common area lobbies and corridors; and
- d. Building systems, including without limitation plumbing supplies and drainage, domestic hot water production, heating, ventilating and air-conditioning production and distributions systems, electrical power distribution and metering systems, lighting controls and fixtures, smoke, fire and any other alarm systems, fire protection systems, security systems, and elevators.

The capital needs assessment must specifically identify all structures, systems, facilities, units and components that were inspected and must include a concise overview of the physical and operational condition of the existing housing and a detailed assessment of the expected useful life and the remaining useful life of each structure, system, facility, unit and component inspected. The capital needs assessment must also include a recommended scope of work and a cost estimate to complete the scope of work that, at a minimum, achieves the following objectives, without consideration of financial feasibility:

- a. Correction of all violations of applicable federal, state and local building, health and life safety codes and correction of all deferred maintenance;
- b. Rehabilitation or replacement of all structures, systems, facilities, units and components that (i) have reached or exceeded their useful lives or will reach their useful lives within 3 years, and (ii) are necessary to ensure that the existing housing, including the buildings

- and major systems, have a useful life of at least 15 years;
- c. Rehabilitation of all units and common areas and facilities to bring them into compliance with MaineHousing's *Quality Standards and Procedures Manual* in effect 60 days prior to the deadline for Applications for the applicable Credit round, to the maximum extent feasible;
  - d. Rehabilitation of the minimum number of units and all common areas and facilities that are necessary to comply with the most current requirements for new construction projects under applicable federal, state and local accessibility laws, regulations, standards and guidance (which include without limitation, Section 504 of the Rehabilitation Act of 1973, HUD's housing regulations at 24 C.F.R. Part 8 and the Uniform Federal Accessibility Standards (UFAS) and Title II and Title III of the Americans with Disabilities Act of 1990 and the 2010 Standards of Accessible Design; and if the Project involves substantial rehabilitation, the Maine Human Rights Act, the Maine Human Rights Commission's Chapter 8, Housing Regulations, and ANSI Standard A117.1-2009); and
  - e. Compliance with the requirements of all other funding sources for the Project, such as Rural Development.

The capital needs assessment must also identify any structures, systems, facilities, units and components with a remaining useful life of less than 30 years. The Application must include a plan for future rehabilitation or replacement of any identified structure, system, facility, unit and component with a useful life of less than 30 years that is not included in the scope of work for the Project, including possible funding sources, which will be considered in establishing the appropriate funding amounts for the Project's reserve accounts.

If MaineHousing determines that the capital needs assessment is inadequate, MaineHousing may, in its sole discretion, (a) reject the capital needs assessment (resulting in a withdrawal of the Application), (b) require the Applicant to correct the deficiencies or submit a new capital needs assessment, or (c) commission a capital needs assessment for the Project at the expense of the Applicant.

3. **Minimum Rehabilitation Requirement.** The Project must need at least \$30,000 of Hard Rehabilitation Costs per unit of existing housing. The Project must satisfy the minimum rehabilitation requirements in Section

42(e)(3) of the Code if greater than the minimum rehabilitation requirement set forth in this subsection. MaineHousing will rely on the capital needs assessment, as reviewed and approved by MaineHousing, to determine whether the Project satisfies the requirements of this subsection. The Applicant must agree to complete the rehabilitation recommended in the capital needs assessment and include the costs of completing the proposed rehabilitation in the Total Development Cost of the Project to the maximum extent feasible, as determined by MaineHousing, even if the proposed rehabilitation exceeds the minimum rehabilitation requirements of this subsection and Section 42(e)(3) of the Code.

4. **Existing Project Reserves.** The Application must identify all existing project accounts and reserves that will be transferred with the purchase of the Project and indicate whether any of the accounts or reserves will be used as a source of funding for the rehabilitation of the Project.
5. **Relocation/Displacement.** The Project must comply with MaineHousing's *Temporary Relocation and Permanent Displacement Policies* and, if the Project is federally-assisted, all federal requirements to the extent applicable, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4201 *et seq.* and 49 C.F.R. Part 24 and Section 104(d) of the Housing and Community Development Act of 1970, as amended, and 24 C.F.R. §42, which may require that assistance be provided to permanently or temporarily displaced tenants. The Applicant must take all reasonable steps to minimize the displacement of existing tenants at the Project site. The Application must identify any tenants who will be permanently displaced in connection with the acquisition and rehabilitation of the Project and the reason for the displacement. An estimate of all costs associated with the permanent and temporary displacement or relocation of tenants must be included in the Total Development Cost of the Project. A relocation plan that complies with all applicable requirements must be submitted to MaineHousing before an allocation of Credit will be made for the Project.

- E. **Project Owner.** The Applicant must be the entity that will be the Owner of the Project if the entity has been legally formed as of the date of the Application. If the entity that will be the Owner of the Project has not been legally formed as of the date of the Application, the Applicant must be the tax credit developer for the Project. At a minimum, the Application must identify the organizational structure and all of the Principals of the entity that will be the Owner of the Project. The Applicant must legally form the entity that will be the Owner of the Project and submit evidence thereof to MaineHousing before an allocation of Credit will be made for the Project.

- F. **Development Capacity.** The Applicant must demonstrate sufficient capacity to develop, complete, maintain and operate the Project, including without limitation a development team consisting of a tax credit developer, a design professional, a management company, a resident service coordinator, a tax advisor (accountant or other tax professional) and an attorney for real estate, financing, tax credits, organizational and land use purposes. The Applicant must demonstrate that all members of the development team are qualified and have sufficient experience and capacity to perform their respective roles. If the tax credit developer or the management company does not have sufficient knowledge or experience with respect to low-income housing tax credits, the Applicant must hire a qualified tax credit consultant with sufficient low-income housing tax credit experience and capacity to assist the tax credit developer or the management company, as applicable. The Application does not require financial statements as part of the initial submission; however, MaineHousing may, in its sole discretion, require financial statements from the tax credit developer and any Principals of the entity that will be the Owner of the Project or any affiliates thereof with respect to any Application that is selected to receive a Notice to Proceed.
- G. **Non-profit Participation.** To qualify for the Non-profit Set-aside, a Qualified Non-profit Organization must own an interest in the Project and materially participate in the development and operation of the Project in accordance with Section 42(h)(5)(B) of the Code. This requirement will be satisfied if the Applicant demonstrates in the Application that a Principal of the entity that will be the Owner of the Project is a Qualified Non-profit Organization or a business corporation in which one or more Qualified Non-profit Organization(s) owns 100% of the stock of the corporation in accordance with Section 42(h)(5)(C) of the Code.
- H. **Site Control.** The Applicant must have site control of the Project as of the date of the Application. Evidence of satisfactory site control includes ownership, an option, a purchase and sale contract, a long-term lease or other evidence acceptable to MaineHousing.

The term of the site control must be for no less than 120 days following the last date on which the Application is due with the unilateral right of the Applicant to extend the term for an additional 120 days or any combination of extension terms that adds up to 120 days. The purpose of this requirement is to ensure the Applicant has control of the Project site for the estimated period of time necessary to process the Application, have a construction loan closing and acquire the Project site.

Any purchase and sale agreement or option should specifically allow entry to the Project site for inspection purposes, such as conducting an environmental site assessment, a capital needs assessment or other reasonable purpose. Any purchase and sale agreement or option for the acquisition of an existing structure(s) must

separately identify the acquisition price for the land and the acquisition price for the structure(s). Any purchase and sale agreement or option for an existing occupied property should specifically allow access to records and other information regarding the existing tenants (including without limitation current rent and income information, to the extent available) for relocation and displacement purposes.

- I. **Located in a Growth Area.** A Project that involves the new construction of or the acquisition of newly-constructed multi-family residential rental property or the conversion of existing buildings to multi-family residential rental property must comply with the State's Growth Management Law. If the municipality in which the Project is located has adopted a comprehensive plan or growth management plan that is consistent with applicable State law, then the Project must be located in a designated growth area as identified in the comprehensive plan or growth management plan of the municipality to be eligible for Credit. If the Project is not located in a designated growth area in the comprehensive or growth management plan of the municipality, then the Project is not eligible for Credit.

If the municipality in which the Project is located has not adopted a comprehensive plan or a growth management plan or the comprehensive or growth management plan adopted by the municipality is not consistent with applicable State law, the Project must be located in an area that is served by a public sewer system with existing capacity for the Project, an area identified as a census-designated place in the latest Federal Decennial Census, or a compact area of an urban compact municipality as defined under 23 M.R.S.A. § 754. Projects that exclusively serve certain populations, including persons with disabilities, persons who are homeless and persons who are wards of the State, are excluded from the requirements of the State's Growth Management Law.

- J. **Project Feasibility.** The Applicant must demonstrate the financial ability to develop and complete the Project and the financial viability of operating the Project throughout the Compliance Period for the Project.

1. **Development Budget.** The Applicant must identify (a) all sources of funding for the development and completion of the Project, including the amount, timing, terms and conditions of the funding and the status of the funding (e.g. applied for or committed) as of the date of the Application, and (b) all uses of the funding based on the projected costs of developing and completing the Project and the projected schedule for completing the Project.

The sources of funding must include, at a minimum, construction financing; permanent financing and funding, including all sources of subsidy directly or indirectly funding the Project; equity generated from the Credit from a tax

credit investor with adequate capacity, as determined by MaineHousing, or an experienced tax credit syndicator; equity generated from any federal or state historic rehabilitation tax credits if the Project is eligible for the credits from a tax credit investor with adequate capacity as determined by MaineHousing or an experienced tax credit syndicator; all project reserves transferred to the Project and available to be used as funding for the development and completion of the Project; and any income to the Project. All equity should be identified and expressed as a “factor” of the credit or benefit dollar amount anticipated.

The sources of funding must be sufficient to pay for all projected costs of developing, acquiring, constructing and/or rehabilitating and completing the Project, including without limitation all lease-up costs and funding of required project accounts and reserves.

2. **Operating Budget.** The Applicant must identify (a) all sources of income for the Project projected over the Compliance Period, including without limitation all rental income from the residential units in the Project, income from any commercial or non-residential space, rental assistance and operating subsidies (such as operating subsidy from tax increment financing), and the amount, terms and conditions of such income, and (b) all costs of operating the Project projected over the Compliance Period for the Project. The Applicant must identify all forms of property tax relief (such as a PILOT or tax abatement or exemption) that reduce the operating costs for the Project.

If any rental assistance or operating subsidy or reduction may expire or terminate during the Compliance Period, the Applicant must explain the impact on the Project’s continued operation after such expiration or termination, including a separate pro forma operating statement for a minimum period of 5 years after the date of expiration or termination showing the transition from the rental assistance or operating subsidy or reduction.

3. **Related Development.** If the Project is part of, or related to, another development and cannot be completed without the completion of the other development, either structurally or financially, then the Applicant must also demonstrate that the Related Development will be completed prior to or concurrently with the completion of the Project and that there is sufficient capacity and funding to complete the Related Development. If the entity that will be the Owner of the Project will own or otherwise be responsible for the completion of the Related Development, the Applicant must fully disclose all sources of funding and all projected costs of developing and completing the Related Development as part of the development budget for

the Project. Otherwise, the Applicant must provide a separate development budget for the Related Development. If the operation of the Related Development is necessary for the feasibility of the Project, the Applicant must submit an acceptable operating budget for the Related Development fully disclosing all of the projected income costs of operating the Related Development during the Compliance Period.

4. **Right to Re-characterize.** MaineHousing may re-characterize any information about the sources and uses submitted by the Applicant in the development budget or the operating budget that MaineHousing determines (a) is not consistent with the supporting documentation submitted by the Applicant or the requirements of a funding source, or (b) is unreasonable based on historical data for comparable Qualified Low-Income Housing Projects, industry standards and market conditions. The Applicant must specify methods for satisfying any deficits that arise or are identified after the Application is submitted.

- K. **Market Study.** The Application must include a comprehensive market study prepared by a qualified professional acceptable to MaineHousing in accordance with the *National Council of Affordable Housing Market Analysts Model Standards for Market Studies for Rental Housing* in effect 120 days prior to the deadline for Applications for the applicable Credit round.

The market study must evaluate the housing needs of low-income persons in the area to be served by the Project, the need and demand for the Project (including the number of units, the population served and the bedroom configuration) and how the Project will address the identified need and demand, and the anticipated impact on similar housing opportunities that are currently available or are under construction or planned in the area the Project will serve, and must otherwise be acceptable to MaineHousing.

If MaineHousing determines that the market study submitted is inadequate, MaineHousing will require the Applicant to correct the inadequacies or submit a new market study. MaineHousing reserves the right to commission its own market study.

- L. **Project Design.** The Application must include schematic to-scale plans of the proposed Project which comply with MaineHousing's *Quality Standards and Procedures Manual* in effect 60 days prior to the deadline for Applications for the applicable Credit round, and all applicable local, state and federal codes, regulations, statutes and ordinances.
- M. **Project Amenities.** The Project must include or provide for the following amenities and services, except as provided below.

1. **Community Room.** The Project must (i) include an on-site community room developed as part of the Project, or (ii) have access to an existing community room at a multi-family housing project located on the same site or an adjoining site to the Project site, provided the existing community room (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications made in connection with the Project will have, sufficient capacity to serve the tenants of the Project and the existing multifamily housing project, and (c) will be available to the tenants of the Project at no cost during the Compliance Period. For a scattered-site Project, only one community room is required and should be centrally located to the greatest extent possible to best serve all of the tenants of the Project.
2. **Laundry Facilities.** The Project must (i) include a washer/dryer hook-up in each unit, or (ii) include a fully accessible laundry facility centrally located within the Project, or (iii) have access to an existing laundry facility at a multi-family housing project located on the same site or an adjoining site to the Project site, provided the existing laundry facility (a) is, or with modifications made in connection with the Project will be, fully accessible and located on an accessible path to the Project, (b) has, or with modifications will have, sufficient capacity regarding the size of the facilities and the number of washing machines and dryers specified in the applicable *Quality Standards and Procedures Manual* to serve the tenants of the Project and the existing multifamily housing project and (c) will be available to the tenants of the Project during the Compliance Period to the same extent as the tenants of the existing multi-family housing project.
3. **Area Activities.** An area(s) of activity must be located on the Project site or within a Safe Walking Distance of  $\frac{1}{2}$  mile of the Project. Such area(s) of activity must be free of charge to the tenants of the Project and not require membership to use the facilities or equipment. Areas for activity are recreational in nature and include but are not limited to ball-fields, basketball courts, tennis courts, playgrounds with equipment, gardening plots, bike trails, walking trails and ice-skating rinks. Areas of activity do not include activities such as banking, shopping and dining. Projects with single-family detached style units satisfy this requirement if each unit has a private lawn with sufficient room for a swing set or other play equipment, gardening or other activities, as determined by MaineHousing.
4. **Exceptions.** The requirements of this subsection do not apply to existing multifamily housing projects if the Applicant can demonstrate that it is

impracticable to comply with the requirements because of the nature of the site, structural limitations, zoning restrictions or other land use limitations.

- N. **Resident Service Coordination.** The Applicant must make a resident service coordinator available to the tenants of the Project to evaluate service needs and refer tenants to appropriate services, and must maintain funding for the resident service coordinator throughout the Compliance Period. The resident service coordinator must be present on-site at the Project and available to the tenants a minimum of one (1) day per week, preferably 2 days per week, and a minimum of 4 to 6 hours per week for Projects with up to 30 units or a minimum of one (1) hour per week for every 5 units for Projects with more than 30 units. The resident service coordinator shall meet with tenants in an on-site office or other appropriate private setting to evaluate individual service needs and refer tenants to appropriate services. The services provided by the resident service coordinator shall be free of charge to the tenants.

If MaineHousing determines the service plan or the capacity of the service provider are inadequate, MaineHousing will identify any deficiencies in the Notice to Proceed and specify the time period in which the Applicant must correct the identified deficiencies. If the Applicant fails to correct the deficiencies within the specified time period in the Notice to Proceed, the Application will be deemed withdrawn.

The Applicant must enter into a service contract with the service provider on terms and conditions acceptable to MaineHousing before the construction loan closing for the Project.

- O. **Smoke-free Housing.** The Applicant must establish and implement a policy prohibiting smoking in all units and common areas of the Project. The Applicant must develop and maintain a written occupancy policy that prohibits smoking in the units and the common areas of the Project, include a non-smoking clause in the lease for every household and make educational materials on tobacco treatment programs, including the phone number for the statewide Maine Tobacco HelpLine, available to all tenants of the Project through the resident service coordinator.
- P. **Waiting List Preference.** The Application must include a commitment of the Applicant to give a preference to eligible persons whose names are on a public housing or Section 8 waiting list, except for a Project that is or will be financed by Rural Development.

## **SECTION 6: SCORING CRITERIA**

Applications that are accepted by MaineHousing and meet the threshold requirements in Section 5 will be reviewed and scored according to the scoring criteria set forth in this

Section. The scoring criteria are weighted based on the housing priorities set forth in Section 2. The factors or characteristics that MaineHousing will consider are set forth in the scoring criteria. The Applicant must complete all information and submit all documentation required in the Application with respect to a scoring criteria to be eligible for the points under the scoring criteria.

A. **Project Characteristics (maximum of 16 points).**

1. **Reuse of Existing Housing, Structures or Sites.** The Application will be awarded 3 points if the Project either (a) involves the rehabilitation of existing multi-family rental housing containing 5 or more units without displacing any existing tenants and without increasing any tenant's housing costs (including rent and all other charges paid by the tenant) by more than 10%, (b) involves the rehabilitation, remediation or reuse of an existing substantial building or structure, or (c) utilizes an Urban Infill Site or a Formerly Developed Site rather than new construction on an undeveloped site.
2. **Preference for Populations with Special Needs.** The Application will be awarded 2 points if preference is given in at least 20% of the units in the Project to persons who are homeless or displaced or have other special housing needs. The Applicant must commit to maintain a waiting list for and offer services appropriate to the needs of the persons for whom the preference is given.
3. **Family Housing.** An Application for a family housing Project will be awarded 4 points if a minimum of 50% of the total low income units in the Project are two or more bedroom units and a minimum of 20% of the total low income units in the Project are three or more bedroom units. An Application for a family housing Project will be awarded 2 points if a minimum of 70% of the total low income units in the Project are two or more bedroom units. [Note: In determining the amount of Credit to be allocated, the Credit rent for three or more bedroom units will be the maximum Credit rent for two-bedroom units plus \$50.00. See Section 7.A.]
4. **Tenant Ownership.** An Application for a Project that provides for low-income tenant ownership will be awarded one (1) point. An Applicant shall not transfer ownership of the Project to the tenants until the Extended Use Period has expired.
5. **Readiness.** An Application will be awarded 4 points if (a) the Project has all municipal land use approvals (except a building permit and other permits customarily issued during construction such as electrical and plumbing

permits) and all State land use approvals (such as site plan, subdivision, stormwater or wetlands approvals) required to proceed with and complete the Project, and (b) any Related Development has all municipal land use approvals (except a building permit and other permits customarily issued during construction) and any State land use approvals required to proceed with and complete the Related Development, and (c) the timeframe to appeal all such approvals has expired as of the date of the Application with no appellate action being taken or all appeals have been resolved as of the date of the Application. The design of the Project submitted to and approved by the municipality and the State must be acceptable to MaineHousing. The Applicant must meet with MaineHousing's Construction Services Manager concerning the design of the Project before submitting the design to the municipality and the State for approval. Notwithstanding MaineHousing's approval of the level of design of the Project approved by the municipality and the State, the final design of the Project, including all plans, details and specifications, must be approved by MaineHousing.

6. **Historic Rehabilitation.** An Application will be awarded 2 points if the Project includes the rehabilitation of a certified historic structure and uses capital generated from both the federal historic preservation tax credit under Section 47 of the Code and the State historic preservation tax credit under 36 M.R.S.A. § 5219-BB for the development of the Project.

#### B. Financial Characteristics (maximum of 28 points).

1. **Total Development Cost.** An Application will be awarded points or lose points based on the Total Development Cost of the Project relative to the following benchmark and range of Total Development Cost for a project of its type.

| Type of Project                                    | Benchmark Total Development Cost (per unit cost) | Lower Limit of Range (per unit cost) | Upper Limit of Range (per unit cost) |
|--|--|--------------------------------------|--------------------------------------|
| New Construction (Elderly)                         | \$180,000  | \$175,000                            | \$185,000                            |
| New Construction (Family)                          | \$205,000  | \$200,000                            | \$210,000                            |
| Acquisition and Rehabilitation of Existing Housing | \$110,000  | \$105,000                            | \$115,000                            |
| Adaptive Reuse                                     | \$225,000  | \$220,000                            | \$230,000                            |

If a Project involves more than one project type, the Benchmark Total Development Cost and the lower limit and upper limit of the associated range of Total Development Cost will be determined as follows. The Benchmark Total Development Cost is the sum of the percentage of Total Development Cost allocable to each project type, based on the number of units in each project type, as applied to the Benchmark Total Development Cost for the respective project type. The lower limit of the associated range of Total Development Cost is \$5,000 less than the Benchmark Total Development Cost and the upper limit of the associated range is \$5,000 more than the Benchmark Total Development Cost. For example, the Benchmark Total Development Cost for an Elderly Housing Project that involves the conversion of an existing historic school into 10 units plus the construction of a new addition containing 10 units is \$202,500 per unit, which is 50% of the \$225,000 Benchmark Total Development Cost for Adaptive Reuse plus 50% of the \$180,000 Benchmark Total Development Cost for the new construction of Elderly Housing. The lower and upper limits of the associated range of Total Development Cost for the Project are \$197,500 and \$207,500, respectively.

- a. The Application will be awarded up to 10 points based on the percentage by which the Total Development Cost of the Project is less than the lower limit of the range of Total Development Cost for that type of project as follows.

| <u>Percentage of Total Development Cost to Lower Limit of Range</u> | <u>Points</u> |
|---|---------------|
|---|---------------|

|                |           |
|----------------|-----------|
| >15% less      | 10 points |
| 10% - 15% less | 6 points  |
| <10% less      | 4 points  |

- b. The Application will lose up to 8 points based on the percentage by which the Total Development Cost of the Project is higher than the upper limit of the range of Total Development Cost for that type of project as follows.

| <u>Percentage of Total Development Cost to Upper Limit of Range</u> | <u>Points</u> |
|---|---------------|
|---|---------------|

|                  |           |
|------------------|-----------|
| <10% higher      | -3 points |
| 10% - 13% higher | -5 points |
| >13% higher      | -8 points |

If there is any increase in the Total Development Cost of the Project between the date of the Application and the later of the construction loan closing for the Project or an allocation of Credit for the Project and the increase is not the result of market conditions or other reason beyond the control of the Applicant as determined by MaineHousing, MaineHousing will re-score the Application based on its effect under this scoring criteria and the below market capital scoring criteria in Section 6.B.2.

The Applicant shall submit a written plan describing how the Applicant intends to cover the increased Total Development Cost to MaineHousing within 30 days of the date MaineHousing notifies the Applicant that the Application has been re-scored. The plan must identify the source(s) of funding to cover the increased cost and provide the timeframe for application, commitment and closing for the source(s) of funding, and must otherwise be acceptable to MaineHousing. If any of the source(s) of funding in the plan qualify as below market capital under Section 6.B.2. and the plan is otherwise acceptable to MaineHousing, then MaineHousing will again re-score the Application under Section 6.B.2.

Any Notice to Proceed issued with respect to the Application will be automatically terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications if (1) the total score of the Application, after re-scoring, is less than the total score of the highest scoring Application on the waiting list, and (2) the Applicant cannot submit a plan to cover the increased Total Development Cost with eligible below market funding in an amount sufficient to increase the score of the Application (if re-scored under Section 6.B.2.) to a total score that is higher than the highest scoring Application on the waiting list. If the total score of the Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.E. to determine the priority of the Application.

2. **Below Market Capital.** An Application for a Project with eligible below market capital funding from a source other than MaineHousing will be awarded up to 6 points based on the present value or net present value, as applicable, of the below market funding (referred to in this subsection as subsidy) relative to the Total Development Cost of the Project as follows.

| <u>Percentage of Subsidy to Total Development Cost</u> | <u>Point(s)</u> |
|--|-----------------|
| Up to 3%   | 1 point         |
| > 3% up to 6%  | 2 points        |
| >6% up to 9%   | 3 points        |

|                |          |
|----------------|----------|
| >9% up to 12%  | 4 points |
| >12% up to 15% | 5 points |
| > 15%          | 6 points |

Tax credit equity, service and operating funds, rental assistance, construction financing and donations or below market purchases of land and buildings are not eligible sources of below market funding under this category. Resources made available, either directly or indirectly, by MaineHousing are not eligible for consideration under this subsection.

The total amount of eligible below market funding for the Project will be reduced by the amount the Total Development Cost of the Project exceeds the Benchmark Total Development Cost. If a Project involves more than one of the project types, the Benchmark Total Development Cost for the Project will be determined in accordance with Section 6.B.1.

MaineHousing will only give consideration to below market funding that has been committed and below market funding that has been applied for, but a commitment has not yet been received by the Applicant. Funds that have not yet been committed will be evaluated at 10% of the amount applied for by the Applicant.

Eligible below market funding will be evaluated based on a present value or net present value basis, as applicable, using the 10-year Treasury note rate as of 30 days prior to the deadline for Applications for the applicable Credit round plus 300 basis points to determine the amount of subsidy. Examples of the calculation of the amount of subsidy for different loan types based on a current market rate of 5.25% (10- year Treasury rate for a comparable loan plus 300 basis points) follow.

- a. Example 1 - The value of a \$500,000 loan @ 3% amortized over 30 years is calculated as follows: The difference between the monthly payments at 5.25% (\$2,761.02) and the monthly payments at 3% (\$2,108.02) is \$653.00. The net present value of this cost savings over 30 years is \$118,253.16.
- b. Example 2 - The value of a \$500,000 loan with interest accruing at 3% for 30 years is calculated as follows: The difference between the future value of the loan at 5.25% (\$2,230,776) and the future value at 3% (\$1,213,631) is \$1,107,144. The present value of this lump sum payment savings due in 30 years is \$238,528.95.

- c. Example 3: The value of a \$500,000 loan at 0% for 30 years is the difference between the future value of the loan (\$500,000) and the present value of the loan at 5.25% (\$107,723), which is \$392,227.

Capital funding made possible by an Affordable Housing TIF that directly benefits the Project will be evaluated as if it were a grant, provided that funding made possible by an Affordable Housing TIF will not be eligible for consideration under this subsection if a complete application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the deadline for Applications for the applicable Credit round.

If a below market funding source that an Applicant was awarded points for under this subsection is terminated or not awarded and the Project is not feasible, the Applicant has 90 days from the date MaineHousing notifies the Applicant that the Project is no longer feasible to find alternative funding with similar terms. If after 90 days the Applicant cannot find a replacement source or the replacement source has different terms, MaineHousing will re-score the Application.

If an Application is re-scored and the total score of the Application is less than the total score of the highest scoring Application on the waiting list after re-scoring, any Notice to Proceed issued with respect to the Application will be automatically terminated and the Application will be placed on the waiting list in the order of its score relative to other Applications. If the total score of an Application is equal to the score of one or more other Applications, MaineHousing will use the tie breaker mechanism in Section 6.E. to prioritize the Applications.

- 3. **Acquisition Cost.** An Application will be awarded up to 4 points based on the acquisition costs of the Project relative to the average acquisition costs for a project of its type as determined by MaineHousing based on historical average acquisition costs of completed projects of each type as follows.

| Type of Project                                    | Average Acquisition Cost |
|--|--------------------------|
| New Construction                                   | \$14,000 per unit        |
| Acquisition and Rehabilitation of Existing Housing | \$47,000 per unit        |
| Adaptive Reuse                                     | \$12,000 per unit        |

| <u>Acquisition Cost Relative<br/>to Average Acquisition Cost</u> | <u>Points</u> |
|--|---------------|
| 0% to 1% (nominal)   | 4 points      |
| >1% to <25%  | 3 points      |
| 25% to 50%   | 2 points      |
| >50% to 75%  | 1 point       |

A Project that involves the acquisition and complete demolition of all existing structures on the site will be treated as a new construction project. For purposes of this subsection, the acquisition costs of the Project include the purchase price for all of the land and any existing building(s) that are part of the Project, the cost of razing any building(s) and structure(s) on the Project site and the Capitalized Lease Value of all leases of land or land and building(s) that are part of the Project.

4. **New Project-based Rental Assistance.** An Application will be awarded up to 5 points based on the percentage of units in the Project for which new project-based rental assistance has been committed as follows.

| <u>Percentage of Units</u> | <u>Points</u> |
|----------------------------|---------------|
| Up to 25%                  | 1 point       |
| 25% to < 50%               | 2 points      |
| 50% to < 75%               | 3 points      |
| 75% to <100%               | 4 points      |
| 100%                       | 5 points      |

Assistance provided under the Project-Based Voucher Program pursuant to 24 CFR Part 983 is eligible for points under this subsection only if the Project has been awarded assistance pursuant to a competitive process prior to the date of the Application. Project-based rental assistance made available, either directly or indirectly, by MaineHousing is not eligible for points under this subsection. To be eligible, the terms of the project-based rental assistance must be similar to the terms of RD or HUD project-based rental assistance or provide rental assistance in the minimum amount of \$200 per assisted unit per month.

5. **Operating Subsidy.** An Application for a Project that is directly benefited by an operating subsidy or reduction in operating costs through a tax increment financing program, a payment in lieu of taxes arrangement, abatement or other form of property tax relief that satisfies the following requirements will be awarded 3 points. The tax increment financing,

payment in lieu of taxes, abatement or other property tax relief arrangement (a) must provide for a minimum of 50% of the Project's annual incremental property tax revenue to be returned to the owner of the Project to pay the operating costs of the Project or foregone by the municipality to reduce the operating costs of the Project for a minimum period of 15 years from the completion of the Project, and (b) must be approved by the municipality in which the Project is located and all other applicable governing entities.

Projects located in municipalities or areas of the State that do not assess or collect real estate taxes are not eligible for points under this subsection.

Resources made available, either directly or indirectly, by MaineHousing are not eligible for consideration under this subsection. Funding made possible by an Affordable Housing TIF will not be eligible for consideration under this subsection if a complete application for the Affordable Housing TIF is submitted to MaineHousing less than 45 days prior to the deadline for Applications for the applicable Credit round.

**C. Project Location (maximum of 25 points).**

1. **Service Center Community Need.** An Application for a Project located in a Service Center Community will be awarded up to 5 points based on the need for the type of affordable housing in the Service Center Community as determined by MaineHousing and set forth below.
  - a. Applications for family housing Projects located in the following Service Center Communities will be awarded the following points.

| Service Center Community | Points |
|--------------------------|--------|
| Auburn                   | 5      |
| Augusta                  | 5      |
| Bangor                   | 5      |
| Bath                     | 5      |
| Biddeford                | 5      |
| Brunswick                | 5      |
| Ellsworth                | 5      |
| Lewiston                 | 5      |
| Portland                 | 5      |
| Sanford                  | 5      |
| South Portland           | 5      |
| Waterville               | 5      |
| Westbrook                | 5      |
|                          |        |

|                   |   |
|-------------------|---|
| Bar Harbor        | 3 |
| Brewer            | 3 |
| Caribou           | 3 |
| Falmouth          | 3 |
| Farmington        | 3 |
| Gardiner          | 3 |
| Houlton           | 3 |
| Kittery           | 3 |
| Madawaska         | 3 |
| Old Orchard Beach | 3 |
| Orono             | 3 |
| Presque Isle      | 3 |
| Rangeley          | 3 |
| Rumford           | 3 |
| Saco              | 3 |
| Scarborough       | 3 |
| Skowhegan         | 3 |
| Topsham           | 3 |
| Windham           | 3 |
|                   |   |
| Calais            | 1 |
| Dexter            | 1 |
| Fort Kent         | 1 |
| Hermon            | 1 |
| Kennebunk         | 1 |
| Lincoln           | 1 |
| Mexico            | 1 |
| Millinocket       | 1 |
| Norway            | 1 |
| Pittsfield        | 1 |
| Rockland          | 1 |
| Rockport          | 1 |
| Van Buren         | 1 |

- b. Applications for Elderly Housing Projects located in the following Service Center Communities will be awarded the following points.

| Service Center Community | Points |
|--------------------------|--------|
| Auburn                   | 5      |
| Augusta                  | 5      |

|                   |   |
|-------------------|---|
| Bangor            | 5 |
| Biddeford         | 5 |
| Brunswick         | 5 |
| Falmouth          | 5 |
| Kennebunk         | 5 |
| Kittery           | 5 |
| Lewiston          | 5 |
| Portland          | 5 |
| Saco              | 5 |
| Sanford           | 5 |
| Scarborough       | 5 |
| South Portland    | 5 |
| Waterville        | 5 |
| Westbrook         | 5 |
| Windham           | 5 |
|                   |   |
| Bath              | 3 |
| Brewer            | 3 |
| Bridgton          | 3 |
| Caribou           | 3 |
| Ellsworth         | 3 |
| Freeport          | 3 |
| Gardiner          | 3 |
| Hermon            | 3 |
| Lincoln           | 3 |
| Madawaska         | 3 |
| Norway            | 3 |
| Old Orchard Beach | 3 |
| Presque Isle      | 3 |
| Rockland          | 3 |
| Skowhegan         | 3 |
| Topsham           | 3 |
| Wiscasset         | 3 |
| Bar Harbor        | 1 |
| Belfast           | 1 |
| Blue Hill         | 1 |
| Camden            | 1 |
| Damariscotta      | 1 |
| Dover-Foxcroft    | 1 |
| Fort Kent         | 1 |
| Houlton           | 1 |

|              |   |
|--------------|---|
| Mexico       | 1 |
| Millinocket  | 1 |
| Mount Desert | 1 |
| Newport      | 1 |
| Orono        | 1 |
| Oxford       | 1 |
| Pittsfield   | 1 |
| Rockport     | 1 |
| Rumford      | 1 |

- c. Applications for Projects located on Native American tribal lands will be awarded 5 points.
2. **Vacancy Rate.** An Application for a Project located in an area in which the vacancy rate in comparable Qualified Low Income Housing Projects is less than 4% will be awarded 2 points. An Application for a Project located in an area in which the vacancy rate in comparable Qualified Low Income Housing Projects is less than 4% and the vacancy rate in comparable market rate multifamily rental housing is less than 5% will be awarded 3 points. MaineHousing will use the current annual vacancy data collected by MaineHousing on Qualified Low Income Housing Projects in the State to determine the vacancy rate in comparable Qualified Low Income Housing Tax Credit Projects under this subsection. MaineHousing will use the rental vacancy rate data in the American Communities Survey in effect 60 days before the deadline for Applications for the applicable Credit round to determine the vacancy rate in comparable market rate multifamily rental housing. For purposes of this subsection, comparable housing is housing that serves the same population (such as elderly or families), is located in the same geographical area, does not receive project-based rental assistance under any state or federal program and has similar unique characteristics (such as housing that consists of all or mostly efficiency units).
3. **Tax Credit/Market Rent Differential.** An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 5% higher than the average maximum tax credit rent for housing occupied by individuals and families with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded one (1) point. An Application for a Project located in an area in which the average market rent for comparable multi-family rental housing is at least 10% higher than the average maximum tax credit rent for housing occupied by individuals and families with income at or below 60% of area median income, as determined in accordance with Section 42 of the Code, will be awarded 2 points. For housing with units of

varying bedroom size, the average rents will be determined using a weighted average based on the number of units of each bedroom size in the housing. MaineHousing will rely on the market rent information in the market study submitted with the Application, as reviewed and approved by MaineHousing, to determine eligibility for the points under this subsection. For purposes of this subsection, comparable housing is housing that is located in the same geographical area and is not subsidized under any state or federal housing program.

4. **Community Revitalization.** An Application will be awarded 2 points if the Project is located within the boundaries of a clearly defined area targeted for revitalization in a Community Revitalization Plan and the Project is part of or contributes to the revitalization goals and efforts specified in the Community Revitalization Plan concerning the rehabilitation or development of housing in the targeted area. One (1) additional point will be awarded if the Project involves the rehabilitation of existing multi-family rental housing containing more than 5 units or is located in a Qualified Census Tract.
5. **Smart Growth.** An Application for a Project that incorporates the following principles of smart growth will be awarded up to 10 points.
  - a. An Application will be awarded 6 points if the Project is located within a Safe Walking Distance of at least 3 destination(s) important to the course of daily living that are appropriate to the population served by the Project. At least one of the destinations important to the course of daily living must be within a Safe Walking Distance of not more than 1,500 feet of the Project and the other destinations important to the course of daily living must be within Safe Walking Distance of not more than 2,500 feet of the Project to qualify for the points under this subsection. An eligible destination important to the course of daily living includes a grocery store, a public school only if the Project is a family project, a pharmacy, a bank or credit union, a post office, a retail store, a general health care practitioner's office (not a specialist), a public library, a hospital or significant places of employment. A single establishment containing more than one destination important to the course of daily living will be considered only one destination important to the course of daily living for purposes of this subsection (e.g. a retail store which includes groceries, a pharmacy and a bank will be considered only one destination, not 4 destinations). An applicant must justify, to MaineHousing's satisfaction, other destinations it believes are important to the course of daily living. Convenience stores, gas stations, restaurants and other food service establishments are not

eligible destinations for purposes of this subsection.

- b. An Application will be awarded up to 4 points if the Project has or provides access to public transportation as follows:
  - i. An Application for Project that is located within a Safe Walking Distance of not more than 1,500 feet of a designated pick-up location for existing Fixed-route Public Transportation will be awarded 4 points; or
  - ii. An Application will be awarded 1 point if Demand Response Transportation is available to all of the tenants of the Project. Demand Response Transportation services with eligibility criteria that limit or deny service to any tenants of the Project are not eligible for the points.

6. **Economic Diversity.** An Application will be awarded 2 points if the Project is located in (a) a municipality with more than one census tract and the area median income in the census tract in which the Project is located is higher than the area median income for the municipality, (b) a municipality with only one census tract and the area median income for the municipality is higher than the area median income for the county in which the municipality is located, or (c) a Qualified Census Tract and at least 20% of the units in the Project are market rate units.

**D. Sponsor Characteristics (maximum of 6 points).**

1. **Development Experience.** An Application will be awarded 2 points if the Applicant or any Principal or any affiliate thereof, (a) has prior experience developing multi-family rental housing with MaineHousing funding and has not been declared in default by MaineHousing in the last 5 years, or (b) has successfully developed Qualified Low-Income Housing Projects in other states.
2. **Tax Credit Noncompliance.** An Application will be awarded 2 points if the Applicant or any Principal or any affiliate thereof, has prior experience with Qualified Low Income Housing Projects and in the last 3 years (a) has not been issued an IRS Form 8823, or was issued an IRS Form 8823 but it was subsequently reported as “noncompliance corrected” within the specified time period for correction, and (b) has not had an IRS audit finding resulting in a recapture event.

3. **Management Experience.** An Application for a Project that will be managed by a MaineHousing-approved management company with staff that have low income housing tax credit training and experience successfully managing a Qualified Low-Income Housing Project(s) will be awarded one (1) point. If the MaineHousing-approved management company has at least 3 years of experience successfully managing a Qualified Low-Income Housing Project(s), the Application will be awarded one (1) additional point.
- E. **Tie Breaker.** In the event the total score of two or more Applications is the same and MaineHousing has, in its sole discretion, determined that there is not enough Credit to fund both or all of the Applications with the same score, the Application for the Project with the lowest Total Development Cost Per Unit will be selected. An Application that is not selected under this tie-breaker process will be placed on the waiting list in the order of the Application's score as prioritized under this subsection.

## **SECTION 7: PROJECT EVALUATION**

After an Applicant executes and returns the Notice to Proceed to MaineHousing, MaineHousing will evaluate the Total Development Cost of the Project to determine the amount of Credit, if any, to be allocated to the Project in accordance with this Section.

- A. **Amount of Credit.** The amount of Credit allocated to the Project will be determined in accordance with the following.
  1. The amount requested in the Application will be the basis on which MaineHousing will make its determination, but the amount MaineHousing determines the Project is eligible to receive may not equal the amount requested in the Application.
  2. The calculation of the amount of Credit will be based on the Applicable Percentage for the month in which the calculation is made unless there has been a qualified irrevocable election of the Applicable Percentage for a prior month.
  3. The calculation of the amount of Credit will be based on 130% of Eligible Basis for Projects located in Qualified Census Tracts, HUD-designated Difficult-to-Develop Areas and other areas designated by MaineHousing pursuant to Section 42(d)(5)(B)(v) of the Code. For purposes of the 2014 State Ceiling, MaineHousing has designated the entire State as a difficult-to-develop area for purposes of Section 42(d)(5)(B)(v) of the Code because of the high cost of developing housing in the State, the low median income of

the State's population and the high, and still increasing, annual operating costs for housing in the State relative to other states in the United States.

4. MaineHousing will use the maximum Credit rent in determining the amount of Credit, except that for three or more bedroom units, MaineHousing will use the maximum Credit rent for two-bedroom units plus \$50.00.
5. The amount of Credit allocated for a Project will not exceed the lesser of the following:
  - a. the amount the Project is eligible to receive under Section 42 of the Code as determined by MaineHousing;
  - b. the amount MaineHousing determines is necessary for the financial feasibility of the Project and its viability as a Qualified Low-income Housing Project throughout the Credit Period; or
  - c. the Maximum Credit Amount.
6. The Applicant must submit financial and all other information about the Project required by MaineHousing. MaineHousing will evaluate the need for Credit based on the following.
  - a. All sources of funding for the Project, including the terms and conditions of the funding;
  - b. The uses of funds, including the reasonableness of development costs and operating expenditures; and
  - c. Any proceeds or receipts expected to be generated by reason of tax benefits.
7. In order to determine the amount of Credit a Project is eligible to receive, MaineHousing must identify the equity gap between development sources and uses which the Credit is designed to fill. MaineHousing reserves the right to limit recognition of Intermediary Costs, re-characterize Project sources and uses and make reasonable assumptions with respect to projected revenues and expenses in the process of calculating the amount of Credit to be allocated to a Project. MaineHousing will also take into consideration any limitations imposed by federal laws and regulations when combining the Credit with other federal subsidies ("subsidy layering" guidelines).

8. MaineHousing will evaluate the reasonableness of the Total Development Cost of the Project. MaineHousing will compare the proposed costs associated with the Project to historical data for similar Qualified Low-income Housing Projects (i.e. size, location, funding source, etc.) and industry cost standards. Consideration will be given to costs associated with tenant services and common area spaces. MaineHousing will require additional information and documentation if MaineHousing feels any of the proposed costs are not comparable or reasonable.
  9. In evaluating the Project's need for Credit, the expectation is that availability of the Credit is a necessary incentive for the Applicant to complete the Project. Applicants should not incur construction costs before MaineHousing determines the amount of Credit a Project is eligible to receive. MaineHousing reserves the right to cease processing any Application which has incurred construction costs prior to applying for Credit. If construction costs are incurred prior to the selection of an Application, the Applicant must demonstrate why the absence of Credit presents a serious risk to the overall viability and operation of the Project.
- B. **Developer Fee.** MaineHousing will limit recognition of Developer Fees. The standard fee, regardless of whether costs used to calculate the fee include compensation paid to consultants, will be based on all aspects of developing a Project, including, without limitation, creating the Project concept, identifying and acquiring the Project site, obtaining construction and permanent financing, obtaining necessary subsidies, negotiating the syndication of investment interests in the Project, obtaining all necessary regulatory approvals, constructing and/or rehabilitating the Project and marketing. Fees paid to consultants do not include fees for professional services such as those for environmental assessments, rental market studies, soil tests, and water tests. Reserves, in the form of cash, expected to be paid to the tax credit developer from the Project will be included in the Developer Fee calculation.

Typically, the Developer Fee consists of two components, overhead and profit, which must be separately identified in the development budget for the Project. The Developer Fee, including these two components, shall not exceed an amount equal to 15% of the Housing Development Costs, plus 10% of the costs of acquisition of land, existing buildings and equipment, all determined without regard to the Developer Fee, subject to Section 42 of the Code and the following limitations.

1. **Acquisition and Rehabilitation Projects.** For Projects that only involve the rehabilitation of existing housing, the Developer Fee due and payable from the total funding for the Project's development budget, including without limitation equity contributions, shall not exceed an amount equal to the lesser of (a) \$10,000 per unit for the first 20 units in the Project and

\$5,000 for each additional unit above 20 units in the Project plus any unused construction contingency returned to the Owner after completion of the Project, and (b) the maximum Developer Fee set forth above; and

2. **Other Projects.** For Projects other than those described in subsection (1) above, the Developer Fee due and payable from the total funding for the Project's development budget, including without limitation equity contributions, shall not exceed an amount equal to the lesser of (a) \$17,500 per unit for the first 20 units in the Project and \$15,000 for each additional unit above 20 units in the Project plus any unused construction contingency returned to the Owner after completion of the Project, and (b) the maximum Developer Fee set forth above; and
3. **Additional Developer Fee.** To be eligible for additional Developer Fee up to the maximum set forth above, the Applicant must agree that any such additional Developer Fee will be used as a funding source for the development, acquisition and construction or rehabilitation of the Project, either by deferring payment or making a loan of the additional Developer Fee to be repaid from the surplus cash of the Project, and the Applicant must demonstrate there is a reasonable certainty that any additional Developer Fee will be fully repaid from the surplus cash of the Project, as determined by MaineHousing pursuant to its underwriting criteria, during the Credit Period or such longer period as allowed by the investor or syndicator for the Project.

- C. **General Contractor Intermediary Costs.** In reviewing Intermediary Costs, MaineHousing will limit recognition of certain general contractor costs. Regardless of the geographic location of the Project, the standards for general contractor overhead, general requirements and profit will be an amount not greater than 16% of the Total Construction Cost, within the following ranges:

|                      |                                     |
|----------------------|-------------------------------------|
| Overhead and Profit  | up to 8% of Total Construction Cost |
| General Requirements | up to 8% of Total Construction Cost |

- D. **Time of Credit Determination.** The evaluation of each Project to determine the amount of Credit to be allocated to the Project will be performed as of each of the following dates.

1. The Application. The Notice to Proceed will evidence the determination made at the time of Application.
2. The allocation of Credit, and as applicable the carryover allocation.

3. The date each Qualified Low-income Building is Placed in Service.

Prior to each determination, the Applicant shall certify to MaineHousing the full extent of all federal, State and local subsidies which apply with respect to the Project and provide such other information MaineHousing deems necessary in order to complete its evaluation.

- E. **Binding Agreement.** After the Applicant accepts a Notice to Proceed by executing and returning the Notice to Proceed to MaineHousing, and to the extent authorized by the Code, MaineHousing and the Applicant may enter into a Binding Agreement to fix the maximum Credit dollar amount to be allocated to each Qualified Low-Income Building for which Credit has been requested. Any such Binding Agreement shall satisfy the requirements of the Code and will contain certain performance-based conditions, including without limitation the conditions set forth in the Notice to Proceed. The Applicant may choose to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the Applicable Percentage for the month in which the Applicant and MaineHousing enter into a Binding Agreement or to select the Applicable Percentage for the month in which the Building is Placed in Service.
- F. **Construction Cost Increases.** MaineHousing may, in its sole discretion, allocate additional Credit if the construction costs of the Project increase after the date of the Application and the increase is the result of market conditions or other reasons beyond the control of the Applicant as determined by MaineHousing in its sole discretion, provided that the additional Credit amount will not exceed an amount that will generate capital contributions in an amount equal to 5% of the Total Construction Cost for the Project estimated at the time construction bids on the Project are requested and is subject to Credit availability.
- G. **Disclaimer.** PURSUANT TO FEDERAL LAW, ANY DETERMINATION MADE BY MAINEHOUSING HEREUNDER SHALL NOT BE CONSTRUED TO BE A REPRESENTATION OR WARRANTY AS TO THE FEASIBILITY OR VIABILITY OF ANY PROJECT AND MAY NOT BE RELIED UPON AS A REPRESENTATION OR WARRANTY BY ANY PARTY.

## **SECTION 8: ALLOCATION OF CREDIT**

- A. **Allocation.** MaineHousing will allocate Credit for the Project by issuance of IRS Form 8609 or such other form prescribed by the IRS in the year the Project is Placed in Service after receipt of the following:
1. A complete request for allocation of Credit, which must be in a form prescribed by MaineHousing and must include an audit report on the

schedule of project costs prepared by an independent, third party certified public accountant.

2. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, state and local subsidies which apply or which the Applicant expects to apply with respect to the Project. In addition, the Applicant must identify all costs associated with the sale (i.e. commissions, due diligence, legal, accounting, reserves, etc.). This certification must include income, operating and development cost projections and methods for satisfying any deficits.
  3. An allocation fee equal to 3% of the amount of Credit allocated to the Project less the amount of any allocation fee paid pursuant to Section 8.B. in connection with the issuance of a carryover allocation for the Project.
  4. A monitoring fee in an amount equal to \$600 per Credit eligible unit in the Project.
- B. **Carryover Allocation.** If a Project or any Qualified Low-income Building that is part of the Project will not be Placed in Service in the calendar year for which a Project is awarded Credit, MaineHousing may issue a carryover allocation for the Project.
1. In order to be considered for a carryover allocation, an Applicant must submit the following.
    - a. A complete request for carryover allocation of Credit in a form prescribed by MaineHousing shall be submitted to MaineHousing no later than the first day of December of the year in which the carryover allocation is made.
    - b. Certification of the total financing planned for the Project, all proceeds or receipts expected to be generated by reason of the Credit or other tax benefits, the total sources and uses of Project funds and the full extent of all Federal, State and local subsidies which apply or which the Applicant expects to apply with respect to the Project. This certification must include income, operating and development cost projections and methods for satisfying any deficits.

- c. Status report on the progress of development of the Project and the likelihood of the Project proceeding to completion.
  2. A carryover allocation must be executed by the Applicant and returned to MaineHousing, together with an allocation fee equal to 3% of the amount of Credit allocated to the Project, no later than December 31 of the year in which the carryover allocation is made.
  3. A carryover allocation will be subject to the following conditions:
    - a. MaineHousing receives satisfactory evidence that more than 10% of the reasonably expected basis in the Project, determined as of the second calendar year following the calendar year in which the carryover allocation is made, is incurred within 12 months of the date the carryover allocation is made, including an audit report on the schedule of project costs prepared by an independent, certified public accountant in form and substance acceptable to MaineHousing;
    - b. The Project is Placed in Service within 2 years following the calendar year in which the carryover allocation is made and only to the extent that the IRS gives effect to such carryover allocation; and
    - c. Any performance conditions MaineHousing may require to ensure maximum utilization of Credit.
- Failure to comply with these conditions may result in a termination or cancellation of the carryover allocation.
4. After all Buildings in the Project are Placed in Service, the Owner shall submit a request for issuance of Form 8609 or such other form prescribed by the IRS in accordance with Section 8.A. The entity making the request must be the same entity that received the carryover allocation.
  5. MaineHousing may carry over any unallocated portion of the State Ceiling and deny any or all requests for Project-specific carryover allocations.

- C. **Tax Credit Compliance Experience.** Prior to an allocation of Credit, the Applicant must demonstrate proficiency of the entity managing the Project in the area of Credit compliance monitoring. The entity must complete a Credit compliance monitoring training approved by MaineHousing or receive a certification from a Credit trainer approved by MaineHousing.

D. **Extended Low Income Housing Commitment.** Prior to an allocation of Credit, the Owner must enter into an Extended Low-income Housing Commitment with MaineHousing which contains restrictive covenants that run with the land, are binding on the Owner and its successors and assigns and are enforceable by MaineHousing and the low-income tenants of the Project. The Extended Low-income Housing Commitment will obligate the Owner to comply with the Code, the affordability requirements and certain other threshold requirements set forth in Section 5, and certain commitments made by the Applicant for which the Application was awarded points under the scoring criteria set forth in Section 6.

The Extended Low-income Housing Commitment must be recorded in the appropriate registry of deeds prior to all mortgage liens and encumbrances on the Project and before MaineHousing issues any IRS Form 8609 for the Project. The Extended Use Period will terminate on the date the Project is acquired by foreclosure or transfer of the Project in lieu of foreclosure so long as any indebtedness owed to MaineHousing in connection with the Project is satisfied in full and the acquisition is not part of an arrangement, a purpose of which is to terminate the Extended Use Period pursuant to Section 42(h)(6)(E) of the Code; provided however, that low-income tenants may not be evicted or suffer an increase in gross rent during the 3-year period following termination.

E. **Converting a Carryover Allocation.** MaineHousing may, in its sole determination, convert a carryover allocation of Credit from the State Ceiling for a particular calendar year to a carryover allocation of Credit from the State Ceiling for the year in which the carryover allocation is terminated or the following year subject to the requirements of this subsection. The carryover allocation must be rescinded by the mutual consent of MaineHousing and the Applicant. At the time the carryover allocation is rescinded, there shall not have been any changes in the Project design or financing which, in the sole determination of MaineHousing, would substantially affect the score that the Applicant received pursuant to the applicable scoring criteria or result in a cost increase which would render the Project withdrawn pursuant to Section 4.I. There must be extenuating circumstances, which result in the Applicant's likely failure to meet the 10% basis test in Section 8.B.3.a. or the likely failure of the Project to be Placed in Service within 2 years following the year in which the allocation was made. The Project will only be required to meet the requirements of the Qualified Allocation Plan in effect at the time the Project received the original allocation of Credit. If the Applicant has entered into a Binding Agreement and elected to lock the Applicable Percentage, then the Applicant is bound by the Applicable Percentage elected under the original Binding Agreement.

F. **Cancellation of Carryover Allocation.** Credit returned to MaineHousing as a result of the termination or cancellation of a carryover allocation prior to September 30 in a particular calendar year will be added to the State Ceiling for the calendar year

in which it is returned. Credit returned as a result of a termination or cancellation of a carryover allocation after September 30 will be added to the State Ceiling for the calendar year in which it is returned or the following year.

- G. **Forward Allocation of Credit.** MaineHousing may issue a binding commitment to allocate State Ceiling available in the subsequent year for any Project Placed in Service in the current year. Credit from the subsequent year's State Ceiling may only be committed upon MaineHousing's determination that the amount of Credit that remains in the current year's State Ceiling is insufficient to ensure the viability or feasibility of the Project. Any binding commitment to allocate subsequent year's State Ceiling authorized pursuant to this section shall be processed and evaluated in accordance with this Qualified Allocation Plan and shall be subject to MaineHousing authority to allocate Credit and applicable law.
- H. **Disclaimers.** An allocation made by MaineHousing will be effective only with respect to a Qualified Low-income Building Placed in Service during the calendar year in which the allocation is made and only to the extent that the IRS gives effect to such allocation. CREDIT RECIPIENTS ARE RESPONSIBLE FOR TAKING ONLY THE AMOUNT OF CREDIT AUTHORIZED UNDER THE CODE AND RECOGNIZED BY THE IRS AND NO RELIANCE MAY BE PLACED ON MAINEHOUSING BY ANY PARTY FOR THIS DETERMINATION.

The Owner's eligibility for the Credit after allocation of the Credit is conditioned on the Owner's continued compliance with certain tenant income and rental restrictions. Failure to comply with such restrictions can result in forfeiture of Credit and recapture penalties imposed by the IRS. MAINEHOUSING ACCEPTS NO RESPONSIBILITY AND NO RESPONSIBILITY SHALL BE IMPLIED BY THE ISSUANCE OF AN ALLOCATION OR CARRYOVER ALLOCATION OF CREDIT ON BEHALF OF A PARTICULAR PROJECT, FOR ENFORCEMENT OF, OR COMPLIANCE WITH, ANY OF THESE RESTRICTIONS NOW OR HEREAFTER IMPOSED.

## **SECTION 9: TAX-EXEMPT BOND FINANCED PROJECTS**

Certain Projects financed with tax-exempt bond proceeds may be eligible for Credit without an allocation from the State Ceiling, subject to the following.

- A. **Eligible Buildings.** A Qualified Low-income Building which is financed with the proceeds of tax-exempt bonds subject to the State volume cap on such bonds qualifies for the Credit on the portion of the Eligible Basis of the building financed with such bond proceeds without an allocation from the State Ceiling. If 50% or more of the Eligible Basis of a Qualified Low-income Building is financed with the proceeds of tax-exempt bonds subject to the state volume cap on such bonds, all of

the Eligible Basis of the Building qualifies for the Credit without an allocation from the State Ceiling.

- B. **Requirements.** The Project must satisfy the requirements set forth in Section 4, except the application deadline in Section 4.B., the selection process and the waiting list described in Sections 4.E. and 4.G., and the Maximum Credit Amount limitation referred to in Section 4.H. The Project must also satisfy the requirements of Section 5, except the affordability threshold requirement set forth in Section 5.B. and the threshold requirements for projects involving the acquisition and rehabilitation of existing housing set forth in Section 5.D. The Project will be evaluated in accordance with the procedures set forth in Section 7 to determine the amount of Credit to be allocated to the Project, except that it will not be subject to the Maximum Credit Amount referred to in Section 7. The Project must comply with the requirements for an allocation pursuant to Section 8.A. and is subject to the monitoring requirements in Section 10.
- C. **Applicable Percentage.** The Owner of a Project that is not yet Placed in Service may, subject to Section 42 of the Code, elect to fix the Applicable Percentage for each Qualified Low-income Building in the Project by irrevocably electing the Applicable Percentage for the month in which the tax-exempt bonds are issued. Such an election must be made on forms provided by MaineHousing and must be made by the fifth (5<sup>th</sup>) day of the month following the month in which the tax-exempt bonds are issued. If the Project does not elect to fix the Applicable Percentage in the month in which the tax-exempt bonds are issued, the Applicable Percentage will be the Applicable Percentage for the month in which each Qualified Low-income Building is Placed in Service.
- D. **Credit Determination.** Once MaineHousing has reviewed the Project in accordance with this Section and deemed the Project eligible to receive Credit, a determination letter will be issued pursuant to Section 42(m) of the Code.
- E. **Allocation.** The Owner of a Project must request the issuance of an IRS Form 8609 for each Qualified Low-income Building in the year the Project is Placed in Service. The request must satisfy the requirements of Section 8.A.

## **SECTION 10: MONITORING**

MaineHousing is required by Federal law to monitor Qualified Low-income Housing Projects for noncompliance with the provisions of Section 42 of the Code and to notify the IRS when it becomes aware of any such noncompliance. In January 2007 the IRS issued its "Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition". The purpose of the Guide is to provide standardized operational definitions for the noncompliance categories listed on Form 8823.

Compliance with the monitoring procedures is a requirement of the Extended Low-income Housing Commitment. MaineHousing reserves the right to impose a reasonable fee for the administrative burden resulting from this on-going monitoring requirement. Owners must comply with the following requirements.

- A. **Recordkeeping and Record Retention.** Owners must keep on file and available to MaineHousing upon request, records for each Qualified Low-income Building in the Qualified Low-income Housing Project, including without limitation, the following information.
1. The total number of residential rental units in each Qualified Low-income Building (including the number of bedrooms and the square footage of each residential rental unit).
  2. The number of residential rental units in each Qualified Low-income Building that are designated low-income units.
  3. The rent charged on each residential rental unit in each Qualified Low-income Building (including any utility allowances).
  4. The number of occupants in each low-income unit.
  5. The low-income unit vacancies in each Qualified Low-income Building and information that shows when, and to whom, the next available units were rented.
  6. An income certification for each household occupying a Credit-eligible unit in the Project at the time of initial occupancy and source documents verifying the income of the household, including for example, a copy of federal income tax returns, W-2 forms or verifications of income from third parties such as employers or State agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with the determination of annual income in accordance with Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving Section 8 housing assistance payments, the documentation requirement is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code.
  7. An income certification for each new member added to the household of a Credit-eligible unit after initial occupancy and third party verification of the new member's income as described in Section 10.A.6.

8. Annual income certifications for each household occupying a Credit-eligible unit in the Project, except (a) no annual income certifications are required for a Project in which 100% of the units in the Project are subject to the applicable income limit elected pursuant to Section 42(g)(1) of the Code for the Project (i.e. either 100% of the units at 60% AMI or 100% of the units at 50% AMI), and (b) for a Project in which 100% of the units are Credit-eligible units but the Project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (e.g. in a 100% Credit-eligible Project with 60% AMI, 50% AMI, 40% AMI and 30% AMI units, annual income certifications are required for the 50% AMI, 40% AMI and 30% AMI units). For Projects financed or assisted under State or federal programs that require annual income certifications, the owner must provide annual income certifications for each household occupying a Credit-eligible unit in the Project.

For a Project in which 100% of the units are Credit-eligible units, MaineHousing will allow a self-certification from each household for which an annual income certification is required under this subsection, except a third party verification of the household's income shall be required every 6 years during the affordability period, commencing on the date on which the first building in the Project is Placed in Service, and otherwise upon request by MaineHousing. The self-certification shall be in writing, shall indicate the size of the household and annual household income, shall include a certification from the household that the information is complete and accurate, shall indicate that third-party source documentation will be provided upon request by the Owner or MaineHousing and shall be witnessed.

9. The Eligible Basis and Qualified Basis of each Qualified Low-income Building at the end of the first year of the Credit Period.
10. The character and use of the nonresidential portion of a Qualified Low-income Building included in the Qualified Low-income Building's Eligible Basis (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the Project).

These records shall be maintained for each Qualified Low-income Building throughout the applicable Extended Use Period. These records shall be retained for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the

Credit Period, however, shall be retained until the later of the end of the applicable Extended Use Period or 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the Qualified Low-income Building. First year quarterly reports shall be filed with MaineHousing.

11. A determination of the student status of the resident household.
- B. **Certification and Review.** Owners must certify compliance with the requirements of Section 42 of the Code as follows:
1. All Owners must certify to MaineHousing annually throughout the Extended Use Period of the Qualified Low-income Housing Project for the calendar year preceding certification that:
    - a. The Project met the minimum low-income set-aside test applicable to the Project and complies with the additional low-income targeting pledged by the Owner as set forth in the Extended Low Income Housing Commitment on which the allocation was based, (e.g. 40% AMI and 50% AMI);
    - b. There was no change in the Applicable Fraction of any Qualified Low-income Building or that there was a change and a description of the change;
    - c. The Owner has received all income certifications and third-party verification thereof required under Section 10.A.;
    - d. Each qualified low-income unit in the Project was rent-restricted under Section 42(g)(2) of the Code;
    - e. All units in the Project were available for use by the general public and used on a nontransient basis, except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code;
    - f. Each Qualified Low-income Building was suitable for occupancy under applicable health, safety and building codes;
    - g. There was no change in the Eligible Basis of any Qualified Low-income Building or if there was a change, the nature of the change (for example, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

- h. All tenant facilities included in the Eligible Basis of any Qualified Low-income Building, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis without charge to all tenants in the Qualified Low-income Building;
- i. If a low-income unit in the Qualified Low-income Building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the Qualified Low-income Building were or will be rented to tenants not having a qualifying income;
- j. If the income of tenants of a low-income unit in the Qualified Low-income Building increased above the limit allowed under Section 42 of the Code, the next available unit of comparable or smaller size in the Qualified Low-income Building was or will be rented to tenants having a qualifying income;
- k. The Project complies with the Extended Low-income Housing Commitment for Qualified Low-income Buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989;
- l. The Project complies with the requirements of all applicable Federal and State housing programs (e.g. RD, Federal HOME, HUD Section 8, or Tax-Exempt Bonds);
- m. The Project has not received notice of any violation of applicable building codes. In the event a violation occurs the owner must report all violations to MaineHousing including a summary of or copies of violations issued. The Owner must indicate whether the violations have been corrected and must retain all original reports of violation;
- n. No findings of discrimination under the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) or the Maine Human Rights Act (5 M.R.S.A., Chapter 337, Subchapter IV) have occurred at the Project. A finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent State or local fair housing agency, or an adverse judgment from a Federal or State court;

- o. No applicant for tenancy in possession of a Section 8 voucher was refused housing solely because of their status as a Section 8 voucher-holder;
  - p. If the Owner received its Credit allocation from a portion of the State Ceiling set-aside for a Project involving a Qualified Non-Profit Organization under Section 42(h)(5) of the Code, then a Qualified Non-profit Organization materially participated in the operation of the Project within the meaning of Section 469(h) of the Code; and
  - q. There has been no change in the ownership or management of the Project.
- 2. Annually throughout the Extended Use Period applicable to the Project, Owners must complete and submit to MaineHousing a tenant status report on a form prescribed by MaineHousing. The tenant status report shall accurately reflect tenant income, rent data and other occupancy information required by MaineHousing for each Qualified Low-income Building in a Project for the prior calendar year.
- 3. MaineHousing will review the tenant files of at least 20% of the low income units in each Project at least once every 3 years. For new Projects Placed in Service, MaineHousing will complete a review of tenant records of 20% of the low income units at the Project within 2 years following the year the last Qualified Low-income Building is Placed in Service. The tenant records to be reviewed, will be selected randomly by MaineHousing. Notice of Project selection, as well as the required timeframe for submission of details, will be provided by MaineHousing to the Owner in writing.
- 4. Owners of Qualified Low-income Buildings financed under the RD Section 515 Rural Rental Housing Program or Qualified Low-income Buildings of which 50% or more of the aggregate basis is financed with the proceeds of tax-exempt bonds are not required to submit, and MaineHousing is not required to review, the tenant income certifications, supporting documentation and rent records if RD or the bond issuer, as applicable, has entered into an agreement with MaineHousing to provide information concerning the income and rent of the tenants in the Qualified Low-income Building to MaineHousing. If the information provided by RD or the bond issuer is not sufficient for MaineHousing to make the required determinations, MaineHousing shall request the necessary additional income or rent information from the Owner.

5. MaineHousing shall review all certifications and supporting documentation submitted hereunder for compliance with the requirements of Section 42 of the Code.
  6. The annual owner certifications, an executed Form 8609 and 8609-A for each Qualified Low-income Building and the tenant status report for each building required hereunder must be submitted to MaineHousing on or before a date established by MaineHousing, but in no event, later than May 1 of each year. The certification must cover the preceding calendar year and must be made as of December 31 of the prior year. A completed and executed Form 8609 is only required to be submitted one time and must accompany the initial submission. The certifications shall be made on forms prescribed by MaineHousing and shall be made under penalty of perjury.
- C. **Data Collection.** Annually, the Owner shall provide certain data required by The Housing and Economic Recovery Act of 2008 (HERA) and associated regulations with respect to its Project and the tenants, including without limitation, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under Section 8 and other similar assistance, disability status and monthly rental payments of households residing in units in the Project for which the Owner receives Credit. The data shall be submitted to MaineHousing electronically and in the format required by MaineHousing to transmit the data to HUD.
- D. **Inspections.** MaineHousing will perform property inspections consistent with Uniform Physical Condition Standards (UPCS) on a one-to-three year cycle, and shall have the right, at any time upon 30 days notice to the Owner, to review all records referred to in this Section.
- E. **Monitoring Fee.** All Applications shall be required to remit a one-time monitoring fee equal to \$600 for each Credit eligible unit in the Project. This fee must be paid prior to the issuance of the IRS Form 8609.
- MaineHousing reserves the right to waive all or part of the fee in the event the partnership enters in a compliance monitoring agreement acceptable to MaineHousing, and agrees to provide sufficient annual documentation to enable MaineHousing to perform its required oversight.
- F. **Notification of Noncompliance.** In the event MaineHousing does not receive the certifications required hereunder when due or they are incomplete or insufficient, MaineHousing will notify the Owner in writing of the missing, incomplete or insufficient certification. In the event MaineHousing discovers through audit, inspection, review or some other manner that the Project is not in compliance with the provisions of Section 42 of the Code, MaineHousing will notify the Owner in

writing of the nature of such noncompliance. In either case, such notice will provide the Owner with a reasonable correction period, not to exceed 90 days, in which the Owner must supply the completed certifications and/or bring the Project into compliance with Section 42 of the Code. If MaineHousing determines there is good cause, it may extend the correction period for up to 6 months. Within 45 days after the end of the correction period, including any permitted extensions, MaineHousing will file the required Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the IRS regardless of whether the noncompliance or failure to certify has been corrected.

- G. **Liability.** COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE QUALIFIED LOW-INCOME BUILDING FOR WHICH THE CREDIT IS ALLOCATED. MAINEHOUSING'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE DOES NOT MAKE MAINEHOUSING LIABLE FOR AN OWNER'S NONCOMPLIANCE.

## SECTION 11: RULE LIMITATIONS

- A. **Other Requirements.** Section 42 of the Code, related provisions of the Code and all associated regulations and guidance, as amended from time to time, contain additional requirements with respect the Credit. Applicants and Owners are subject to and must comply with all such requirements.
- B. **Conflicts.** If this rule conflicts with any provision of federal or State law, the federal or State law shall control.
- C. **Not an Entitlement.** This rule establishes a pool of eligible Applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to Credit on any person or entity eligible hereunder.
- D. **Final Agency Action.** The Director of MaineHousing, individually or by exercise of the delegation of powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.
- E. **Waiver.** Upon a determination of good cause, the Director of MaineHousing or the Director's designee may, subject to statutory limitations, waive any provision of this rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

F. **Headings.** The headings in this rule are for convenience only and do not define or limit the scope of the provisions of this rule.

**STATUTORY AUTHORITY:** 30-A MRSA §§4741(1) and 4741(14), Section 42 of the Internal Revenue Code of 1986, as amended

**BASIS STATEMENT:** The Internal Revenue Code of 1986, as amended, (the “Code”) requires Maine State Housing Authority (“MaineHousing”), as the State’s designated housing credit agency, to adopt a qualified allocation plan for allocating and administering federal low income housing tax credits (“Credit”), including without limitation the State ceiling of federal low-income housing tax credits (“State Ceiling”).

Chapter 16 of MaineHousing’s rules, the *Low Income Housing Tax Credit Rule*, is the State’s qualified allocation plan for allocating and administering the Credit. This rule will repeal and replace in its entirety the current Chapter 16 of MaineHousing’s rules which governs the allocation of the 2013 State Ceiling and is referred to herein as the prior rule. This rule will be the State’s qualified allocation plan for allocating and administering the Credit, including the 2014 State Ceiling.

The priority in the selection process for the 2014 State Ceiling continues to be cost containment. The prior rule established a new cap on the total development costs of projects by project type and a new scoring category that rewarded projects with total development costs that were lower than the average total development costs for similar projects (referred to as benchmarks in the rule) and penalized projects with higher total development costs. The total development cost caps are the same as the caps in the prior rule. The total development cost benchmarks in the scoring criteria are the same as the benchmarks in the prior rule, except the benchmark for the acquisition and rehabilitation of existing housing has been reduced from \$125,000 to \$110,000. The benchmark has been reduced because all of the applications for projects involving the acquisition and rehabilitation of existing housing scored the maximum points under the scoring category in the prior Credit round, which indicates the benchmark in the prior rule may have been too high. Also, this rule does not include the 5% buffer for increases in total development costs after the application submission that was in the prior rule. The purpose of this change is to prevent an applicant from making changes to the project that increase the cost of the project after the project has been selected and to discourage applicants from intentionally underestimating the total development costs of a project. Under this rule, an application will be re-scored if there is any increase in the total development costs of a project between the time of application and the earlier of an allocation of credit to or construction loan closing for the project, other than increases due to market conditions or other reasons beyond the control of the applicant.

This rule imposes new limitations on projects involving the acquisition and rehabilitation of existing housing. The State Ceiling is a valuable resource and should be used primarily for the creation of new affordable housing units in the State. MaineHousing has historically provided funding for the preservation of existing affordable housing, particularly Section 8 project-based rental assistance projects, through its tax-exempt bond programs. With uncertainty about the availability of tax-exempt

bond financing authority and recent experience that some projects were not feasible under the bond program, the prior rule allowed Section 8 project-based rental assistance projects to compete for the State Ceiling after a long history of being excluded. The result was that at least half of the applications and more than half of the top-scoring applications for the 2013 State Ceiling involved the acquisition and rehabilitation of Section 8 project-based rental assistance projects and other affordable housing projects. To ensure that the State Ceiling is used primarily to create new affordable housing units, this rule restricts the preservation of existing affordable housing to the Preservation Set-aside. The Preservation Set-aside reserves Credit for up to two projects and has been expanded to include the preservation of all existing affordable housing, including existing Rural Development projects, HUD projects, tax credit projects and other affordable housing.

The rule includes other limitations on the acquisition and rehabilitation of existing housing that are designed to maximize the use of the State Ceiling. This rule requires a certain amount of rehabilitation for existing housing, which maximizes the value of the Credit because the Credit rate for rehabilitation is 9% and the Credit rate for acquisition is only 4%. A project must need at least \$30,000 of hard rehabilitation costs per unit to qualify for the State Ceiling. Applicants must submit a capital needs assessment supporting the amount of rehabilitation the project needs. Also, the rule limits the developer fee for projects that only involve the acquisition and rehabilitation of existing housing because these projects are much less complex in terms of design work and land use approvals than new construction and adaptive/reuse projects.

The minimum level of affordability has been reduced. This rule reduces the minimum number of units required to be affordable to persons with income at or below 50% of area median income (very low income) from 60% to 40%. Subsidy resources are scarce and there has been a significant increase in the number of projects requesting workouts and loan modifications recently, including requests for relief from affordability restrictions. Given this environment, MaineHousing is concerned about the ability of projects to sustain the level of affordability historically required by MaineHousing. The deeper level of affordability limits the rental income the project is able to realize, which increases the amount of subsidy the project needs to cover capital costs, limits the ability of the project to withstand unforeseen increases in project costs (such as property taxes, insurance and energy costs) and reduces the amount of debt the project can afford. In addition to reducing the minimum percentage of very low income units, the percentage will only apply to Credit-eligible units under the rule. Applying the income targeting to all of the units in the project has limited the development of mixed-income projects (projects with Credit-eligible and market rate units) which require a certain number of market rate units to be feasible. In some cases, half or more than half of the units in these projects have to be market rate units to make a mixed-income project feasible.

The minimum affordability period has also been reduced. MaineHousing has historically incented or required a minimum of 90 years of affordability. The 90-year period of affordability has been problematic for developers in some municipalities that feel the affordability restriction hampers future planning. To balance this concern with MaineHousing's desire to preserve the affordability of these projects for the longest period, the affordability period has been reduced to 45 years in this rule.

MaineHousing hired an independent market analyst to review the housing needs and location categories. The market analyst agreed with MaineHousing that calculating the need by service center communities is the fairest approach at this time, so housing need will continue to be ranked by service center community. MaineHousing adjusted the formula to include persons between 55 and 65 years old in the demand side of the formula for both family housing and elderly housing, because this age group qualifies for both types of housing. The service center community need category has been updated with the latest census and service center community data.

Two modifications have been made to the vacancy rate scoring criteria based on recommendations by the market analyst. First, the threshold vacancy rate for comparable low-income housing tax credit projects has been reduced from 5% to 4% because these projects generally have a lower vacancy rate than comparable market rate properties. Second, MaineHousing will rely on the American Community Survey as the source of data for vacancy rates in market rate properties because the American Community Survey is a more reliable source of data than the point-in-time data used in the market studies provided by the applicants.

The rule also includes new scoring criteria to address a concern expressed by the market analyst that there are certain urban communities that have high concentrations of low-income persons and affordable housing. The scoring criteria award points to projects that are located in census tracts with higher than average area median incomes or to mixed-income projects that are located in qualified census tracts. The purpose of the criteria is to encourage the development of more economically diverse neighborhoods and to reduce the concentration of affordable housing in low-income communities.

The focus of the smart growth scoring criteria in this rule has shifted away from downtowns, which has been the focus of the smart growth criteria in prior rules. Many municipalities in the State do not have downtowns, but do have areas where the development of affordable housing promotes the smart growth principles of the State. The criteria under this rule reward projects that are located near destinations important to the course of daily living and projects that have access to public transportation, including projects that are located near pick-up locations for fixed-route public transportation or projects served by demand response transportation. The points under the criteria are cumulative. Projects that are located near destinations important to daily living and a pick-up location for fixed-route public transportation will receive the full 10 points available under the criteria. Most, if not all, projects that are located in downtowns should qualify for the maximum points under this category.

MaineHousing has substantially overhauled its application for Credit this year and is requiring all applicants to submit the application electronically. The threshold submission requirements and submission requirements for scoring criteria that were set forth in the prior rule have been moved to the new application. The submission requirements in the new application will be more detailed and will be formatted to make it easier for applicants to understand what must be submitted with the application. The rule requires that the threshold submission requirements set forth in the new application must be satisfied to be eligible for Credit and that the submission requirements with

respect to scoring criteria set forth in the application must be satisfied to be awarded points under the respective scoring criteria.

Other changes to the rule include the following. The management experience category has been stratified to reward the use of management companies that have staff with low-income housing tax credit training and experience, with greater points being awarded for management companies with 3 or more years of experience. The threshold requirement that projects give persons on the Section 8 waiting list preference in housing now excludes projects financed by Rural Development (RD) because the federal regulations do not allow preferences in RD-financed properties. The separate caps on contractor overhead and profit have been combined to address concerns that allocating costs between overhead and profit can be difficult and is viewed by some contractors as overreaching.

The rule provides clarifications concerning certain scoring criteria that have been retained from the prior rule. The scoring criteria that rewards the acquisition and rehabilitation of existing housing with protection against displacement and substantial rent increases has been modified to clarify that a substantial increase in rent is 10% or more for any individual tenant. Two clarifying modifications were made to the scoring criteria that reward lower than average acquisition costs. First, the capitalized value of any leases of land and buildings that are part of the project and demolition costs are included in the acquisition costs of a project for purposes of the criteria. Also, projects that involve the acquisition and demolition of all existing buildings on the project site will be treated as a new construction project for purposes of the criteria. A similar clarification was made in the maximum total development cost threshold requirement. The scoring criteria that reward projects with lower vacancy rates and greater differentials between the tax credit rent and the market rent in comparable housing have been modified to clarify what constitutes comparable housing for purposes of the respective categories. The rule includes a new defined term to clarify what constitutes a “community revitalization plan” for purposes of the community revitalization scoring criteria. The rule also includes a new defined term to clarify what constitutes a “principal” for purposes of the developer experience scoring criteria.

The rule makes other minor modifications, clarifications, grammatical changes and formatting improvements from the prior rule.

## **Process**

MaineHousing held public meetings prior to and during the course of developing the proposed rule on February 21, 2013, March 12, 2013, March 20, 2013, March 26, 2013 and May 6, 2013. In accordance with Executive Order 20 FY 11/12 dated August 24, 2011, MaineHousing submitted the proposed rule to the Office of the Governor for review and authorization to publish the proposed rule for public comment. The Office of the Governor approved the proposed rule on May 22, 2013.

MaineHousing notified interested parties of the public hearing on the proposed rule on May 24, 2013 and published a public hearing notice in the State of Maine’s rulemaking notices ad in the

major newspapers in the State on May 29, 2013. The public hearing was held on June 18, 2013. MaineHousing continued to accept written comments on the proposed rule through June 28, 2013. Greg Payne, representing the Maine Affordable Housing Coalition (MAHC) and Avesta Housing, Sherrin Vail, the Director of Property Management at Avesta Housing, and Nathan Szanton of The Szanton Company testified at the public hearing. MaineHousing received written comments from the South Berwick Town Council members (Gerald W. MacPherson, David H. Webster, Russell Abell, Jean Demetracopoulos and John C. Kareckas), Kevin Bunker of Developer's Collaborative, David Bateman of Bateman Partners, LLC, Dan Coyne of United Way, Robyn Merrill of Maine Equal Justice, Anne Gass of ABG Consulting, Nicole Barrett of National Affordable Housing Trust (NAHTC), Joe Wishcamper and Nathan Szanton.

### **Summary of Comments on the Proposed Rule and MaineHousing's Response**

#### **Preservation Set-aside (Section 3.C.) and Preservation Scoring Criteria (Section 6.A.1. and Section 6.C.4.)**

Comment: NAHTC supports the set-aside for the preservation of affordable multi-family housing and the scoring criteria that award points for the preservation of existing housing. NAHTC commented that 46 state agencies, including Maine, create set-asides or award points for the preservation of existing affordable housing in their competitive 9% tax credit programs. NAHTC commented that set-asides and scoring criteria that incent the preservation and rehabilitation of existing affordable housing (i) prevent the loss of affordable housing to market-rate conversion, deterioration and demolition, (ii) are cost-effective and preserve and prolong federal investment, such as project-based rental assistance, in affordable housing properties, (iii) help maintain sustainable communities in strong markets and can catalyze investment and development in struggling neighborhoods or neighborhoods affected by foreclosure, and (iv) are fundamentally green because rehabilitation produces less construction waste, requires fewer new materials and consumes less energy than demolition and new construction. NAHTC commended Maine for its successful preservation efforts in the past, commenting that Maine is a leader in prioritizing preservation in its region.

Response: MaineHousing agrees that the preservation of existing affordable housing is important, particularly housing that is at risk of loss to the market or due to deterioration, and appreciates NAHTC's comments.

#### **Section 5.B. Affordability**

Comments: MAHC, Avesta Housing, United Way, Maine Equal Justice Partners and Ms. Gass are opposed to the changes to the income targeting. They commented that the need for affordable housing is greater for lower income persons, and the need is even greater now according to MAHC and Ms. Gass.

MAHC commented that 75% of persons who apply for tax credit housing do not qualify. Avesta Housing commented that 85% of persons on their waiting lists need less than 50% AMI units. Avesta Housing is concerned about more 60% AMI units, particularly with fewer vouchers under sequestration, because only 15% of tenants in the 60% AMI units in their housing can afford the 60% tax credit rents now; 50% of the tenants in these units have a voucher and the other 35% of the tenants cannot afford the 60% tax credit rent.

Ms. Gass commented that the gap between housing costs and income has widened steadily over time and persons with the lowest incomes having suffered the most from this. She commented that the lack of affordable housing for lower income persons contributes to record high levels of homelessness in Maine, makes it hard for lower income families to find and keep jobs and keep their children in school, and makes recovery from mental illness and substance abuse almost impossible. Reducing the minimum affordability targeting will cause Maine to fall further behind in its ability to house the most vulnerable families.

MAHC and Ms. Gass commented that deep subsidy is needed to serve the lowest income families. MAHC commented that the Rental Loan Program subsidy offered in conjunction with the tax credits should be designed to give developers flexibility to provide deeper affordability.

Ms. Gass also opposed the reduction in the affordability period. She questions how much of a barrier to development the 90-year affordability period is, and suggests that the tax credits should be used in municipalities that will accept the 90-year requirement because the tax credit program is oversubscribed. She commented that with fewer subsidies available, particularly now with the cuts in vouchers and other federal subsidies under sequestration, these scarce resources should be used more efficiently by preserving affordable housing, because it is unlikely that there will be more resources to create new housing or less need for affordable housing in 45 years.

Response: MaineHousing understands that reducing the minimum affordability requirement will reduce the number of units available for persons at or below 50% of area median income. However, in recent years, MaineHousing has seen an increasing number of older low-income housing tax credit projects come to MaineHousing in financial distress seeking relief from previously imposed lower income targeting restrictions, which reduces the amount of revenue available to cover ever increasing operating costs. MaineHousing is concerned about the ability of projects to sustain the level of affordability historically required by MaineHousing.

Also, the tax credit program is not designed to serve persons with income below 60% of area median income, so subsidy is necessary to target lower income persons. In this environment of shrinking subsidy resources, we do not have sufficient resources to maintain the former level of affordability. The new minimum affordability requirement still exceeds the minimum federal affordability requirement by 20% and will lead to financially healthier projects in the long run. Should the financial environment change, MaineHousing will consider increasing the minimum affordability requirement at that time. The subsidy that will be offered under the Rental Loan Program will be in an amount sufficient to achieve the minimum level of affordability required

under this qualified allocation plan. Developers who want to provide deeper affordability must find other resources to cover the cost.

The 90-year affordability period has been a problem for developers in some municipalities that feel the affordability restriction hampers future planning. We do not want the affordability period to be a barrier to developing affordable housing in these communities. The reduced affordability period still exceeds the minimum federal affordability requirement by 15 years and is a reasonable balance between the concerns of these municipalities and preserving the affordability for the longest period.

#### **Section 5.D. Acquisition and Rehabilitation of Existing Housing**

Comment: Mr. Wishcamper commented that owners of existing multifamily housing should be eligible for acquisition credit for redevelopment of their property to incent good developers to stay with MaineHousing's program.

Response: The acquisition and rehabilitation of existing multifamily housing by owner-related parties is eligible for acquisition credit subject to the limitations under Section 42 of the Code.

Comments: MAHC supports the changes to the requirements for projects involving the acquisition and rehabilitation of existing housing.

Mr. Wishcamper commented that at a time when the President of the United States wants prioritization of acquisition and rehabilitation of existing affordable housing, MaineHousing appears to prefer new construction and adaptive reuse, both of which are more expensive than acquisition and rehabilitation of existing housing without the new restrictions under the rule.

Response: MaineHousing agrees that the acquisition and rehabilitation of existing affordable multifamily housing should be a priority, which is reflected in the Preservation Set-aside and the scoring criteria that award points for projects that involve the rehabilitation of existing housing. However, there should be a balance between this priority and maximizing the use and efficiency of the State ceiling (which is often referred to as the 9% credit). The most efficient use of the State ceiling is the creation of new units. The credit rate for new construction and rehabilitation is 9%, but the credit rate for the acquisition of existing housing is only 4%. The purpose of the new requirements for the acquisition and rehabilitation of existing housing is to maximize the value and the use of the State ceiling. There are more efficient ways to finance the acquisition and rehabilitation of existing housing, such as tax-exempt financing and the automatic 4% low-income housing tax credits generated by the financing.

#### **Section 5.L. Project Design**

Comment: NAHTC encourages MaineHousing to maintain the green building practices in the qualified allocation plan. NAHTC commented that green building strategies provide significant health, environmental and financial benefits to lower-income families and communities by

promoting energy and water conservation, providing long-term savings through reduced utility and maintenance costs, creating a healthier living environment for residents and reducing carbon emissions.

Response: MaineHousing's energy efficiency and green building practices are set forth in its *Quality Standards and Procedures Manual*. MaineHousing is committed to producing and rehabilitating energy efficient, environmentally conscious and durable housing.

#### **Section 6.B.1. Total Development Cost**

Comment: Mr. Bateman expressed concern about the elimination of the 5% buffer for increases in total development costs after an application is submitted. He commented that there are inherent uncertainties in development that are beyond the control of the developer, particularly with respect to environmental remediation and construction. He commented that eliminating the buffer means that applications will be re-scored for any increase, even increases resulting from circumstances beyond the control of the developer. He commented that scoring is close, so any re-scoring will likely result in an alternative application being selected, and because an application can be re-scored anytime before construction loan closing, there will be a significant delay in housing production, particularly if the re-scoring does not occur until the 90% plan review. Mr. Bateman suggested allowing the use of the construction contingency to cover any increase in total development cost rather than re-scoring the application.

Response: The scoring criteria provides that an application will not be re-scored for cost increases due to market conditions or other circumstances beyond the control of the applicant. The 5% buffer (which for a \$3 million project is \$150,000 and a \$5 million project is \$250,000) was eliminated to prevent applicants from making changes to the project that increase costs after the project has been selected and to discourage applicants from intentionally underestimating the total development costs of a project, both of which situations occurred under the prior qualified allocation plan. The purpose of the construction contingency is to cover cost increases due to unforeseen circumstances after construction begins.

Comment: Mr. Wishcamper commented that \$110,000 per unit in total development costs caps the sale value of existing housing to approximately \$35,000 per unit if the project needs \$45,000 per unit in rehabilitation, taking into consideration usual soft costs. He commented that the investment value of most existing affordable housing is more than \$35,000 per unit, so preserving the housing under the qualified allocation plan will not be the highest or best use of the property.

Response: The total development cost cap for projects involving the acquisition and rehabilitation of existing housing is \$150,000 per unit as set forth in Section 5.C., not \$110,000 per unit. The \$110,000 per unit total development cost is the benchmark under the total development cost scoring criteria, the purpose of which is to incent lower total development costs. The benchmark is based on the average total development cost of projects involving the acquisition and rehabilitation of

existing housing based on MaineHousing's experience.

### **Section 6.C.1. Service Center Community Need**

Comment: The Town of South Berwick Council members commented that there is a need for affordable senior housing in South Berwick, particularly for residents whose families have lived there for generations and cannot afford to stay there, but the application submitted by Avesta Housing for a project in South Berwick is not on a level playing field with other applications because South Berwick is not a service center community.

Response: Service center communities are designated under the State's Municipal Planning Assistance Program, not by MaineHousing. As indicated in the basis statement, MaineHousing hired an independent market analyst this year to review the housing need category. After a thorough review of alternative approaches to prioritizing housing need in the State, the market analyst agreed with MaineHousing that prioritizing the housing need by service center communities is the fairest approach at this time.

### **Section 6.C.5. Smart Growth**

Comments: MAHC and Mr. Bunker are opposed to the change that removes proximity to a downtown from the smart growth criteria and commented that projects located within 1,500 feet of a downtown should continue to be eligible for the maximum points under the smart growth criteria. They commented that a project located in or near a downtown is intuitively smart growth. Mr. Bunker commented that there are many downtowns, including traditional downtowns, which will not qualify for the maximum points because they do not have a bus line. He also commented that there are many municipalities with downtowns that are not service center communities, and projects located in these downtowns need the smart growth points to make up for ineligibility for need points. MAHC commented that some sites on Portland's peninsula, all of which is considered downtown Portland, may not qualify for the maximum points under the smart growth criteria.

NAHTC supports the scoring criteria that awards points to projects with access to community amenities, particularly public transportation. NAHTC commented that this incentive promotes sustainable communities by encouraging community vitality, promoting diverse neighborhoods and ensuring that low-income families have good access to jobs and services.

Response: The purpose of the changes to the smart growth criteria was to shift the focus away from the project's location near a downtown and more toward the project's proximity to amenities and services that are important to the daily living of the residents, such as a grocery store or a school for a family project, and proximity to public transportation for residents to access employment and other amenities. We agree with NAHTC that providing low-income families with access to employment and the services they need is important and vital to sustaining communities.

Projects that are located in or near most downtowns will qualify for the maximum points under the

smart growth scoring criteria. There may be downtowns where this is not the case. However, projects in downtowns and other areas with amenities important to the daily lives of the residents and access to public transportation is “smarter” growth, and we believe should score higher, than projects in downtowns that do not have access to amenities or services and/or access to public transportation.

### **Section 6.C.6. Economic Diversity**

Comment: MAHC commented that the new scoring criteria ignore the reality of what low-income housing tax credit projects are, and that these projects often improve low-income neighborhoods. MAHC pointed out certain technical deficiencies with the new economic diversity scoring criteria.

Response: The purpose of the new criteria is to encourage the development of more economically diverse communities and to reduce the concentration of affordable housing in low-income communities. The market analyst that MaineHousing hired to review the location and needs scoring criteria in the qualified allocation plan expressed concern that there are certain neighborhoods within the State’s urban centers that have high concentrations of low-income persons and assisted housing and that certain criteria in the qualified allocation plan may contribute to this. The concentration of affordable housing in areas with high concentration of poverty, particularly qualified census tracts, has become a national fair housing concern. Advocacy groups have successfully challenged the adoption of qualified allocation plans in some states and larger cities in the country that incent the development of tax credit projects in qualified census tracts because of the discriminatory effect it has on minorities. The deficiencies pointed out by MAHC have been corrected. See the redlined changes to Section 6.C.6.

### **Section 6.D.3. Management Experience**

Comment: Mr. Szanton commented that management companies with well-trained and experienced staff should qualify for points under the scoring criteria regardless of the experience of the management company itself. Mr. Szanton commented that there is a lack of qualified tax credit management companies in the State, and that he created his own company to provide better management of his properties than the third-party management company he was using.

Response: This scoring criteria was modified this year to encourage the establishment of new management companies with well-trained and experienced tax credit staff. Under the revised scoring criteria, projects with management companies that have staff with low-income housing tax credit training and experience will be awarded one point, but projects with a management company that has both qualified staff and 3 or more years of successful experience will be awarded an additional point.

## **Section 7.B. Developer Fee**

Comment: Mr. Wishcamper commented that the developer fee for projects involving the acquisition and rehabilitation of existing housing is the lowest of any state in which he develops affordable housing and is too low considering the pre-development, development and guarantee risk and the staff time and resources associated with re-developing an existing housing project.

Response: MaineHousing reduced the developer fee for re-developing existing housing because the design work and permitting of these projects is significantly less complex and less expensive than it is for new construction and adaptive/reuse projects.

## **General Comments**

Comment: MAHC and Mr. Szanton commended MaineHousing for the process in developing the rule. Mr. Szanton commented that it was constructive and allowed participants to share ideas and provide input.

Response: We agree that the process worked well this year. We appreciate the participation and input from the persons who attended the public sessions and submitted comments.

Comment: MAHC commented that any data on which projects will be scored should be made available upfront.

Response: MaineHousing is in the process of compiling the most recent year's vacancy rate data for low-income housing tax credit projects and will make it available when ready. The American Community Survey vacancy rate data for market rate multifamily housing is available on the US Census website. MaineHousing will determine a project's eligibility under the Economic Diversity scoring criteria at the time of the pre-application site review because providing the data for all locations in the State is too complicated and extensive.

Comment: NAHTC encourages MaineHousing to work with State utilities to create energy efficiency programs for multifamily housing. NAHTC commented that a majority of states have utility-funded energy efficiency programs with significant resources for energy improvements, but these programs are underutilized by multifamily housing. NAHTC commented that in some states utilities have partnered with housing authorities and/or affordable housing owners to provide successful multifamily retrofit programs.

Response: MaineHousing coordinates with Efficiency Maine to deliver energy efficiency programs for low-income persons in the State, including without limitation, owners of affordable multifamily rental housing. Efficiency Maine is an independent trust that was originally established by the State of Maine in 2002 and provides energy efficiency programs, primarily funded with a benefit charge included in electricity rates. Also, MaineHousing's Multifamily Home Energy Loan Program has been providing low-interest financing to existing affordable multifamily rental housing for energy

improvements since May 2008.

**FISCAL IMPACT OF THE RULE:** The 2014 State ceiling of low income housing tax credits is projected to raise approximately \$26,000,000 in equity. The equity generated by the low income housing tax credits will be used to develop affordable housing for low-income persons. The proposed amendments will not impose any costs on municipalities or counties for implementation or compliance.

**EFFECTIVE DATE:** August 10, 2013